

Secession and Liberal Equality

An Essay on the Morality of Secession from a Liberal State

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Liberal egalitarianism can offer two distinct perspectives on the morality of secession from a liberal state. One is permissive. The other is quite restrictive. This essay offers a defence of the latter variant, which is often called Just-Cause theory. On this view, secession can only be morally justified as a means to rectify past grievances on the part of the secessionist group. Secession must have a just cause. If none can be found, then the territorial sovereignty of a state that upholds liberal democratic rule cannot be thwarted. According to the rival position – Choice-theory – secession can be justified even in the absence of any injustice. This more permissive view on state breaking is expected to follow from valuing freedom of political association. I demonstrate how both approaches can be developed from central commitments of liberal egalitarian morality. These commitments often come into conflict. And the case of political divorce is no exception. A liberal theory of secession must therefore be at pains to come up with the best possible balancing of important, yet incongruous, commitments. In that respect, I argue that the Just-Cause approach represents the best overall liberal egalitarian theory of secession.

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For my parents

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Kim Angell

Secession and Liberal Equality

Introduction

The word secession brings two intuitive associations to mind. Firstly, and perhaps most obvious, the venture of political divorce may represent *liberation*. Consider the persistent secessionist group, which for decades has fought an oppressive and rights-violating state: To see it secede would certainly exude a profound sense of liberty. Secession is the breaking of chains. It enhances freedom. Clearly, this sounds laudable.

The other association may strike a less happy chord. Consider a liberal democratic state, in which a group of people have come to believe that they are better off on their own: Whatever has come to estrange them (from the other citizens) is not sought reconciled collectively; instead, the separatist option is pursued. So, as secessionists, rather than pressing ourselves to pursue democratic politics as the ultimate means of reconciliation and accommodation of difference, we quite simply quit the game. But do we have a right to quit in that way? The laudability of secession may somehow appear to vitiate.

Clearly, it does not require much reflection to identify a morally relevant difference between these two examples. If secession is the most appropriate means to escape tyrannical government, then the burden of proof will fall heavily on those who seek to justify resistance to the divorce. This, I think, is rather clear-cut. But what if a state has not inflicted any harmful policies upon its citizens? On the contrary, what if it has been persistent in securing liberal democratic rule, and still does. Is a secessionist movement within such a state entitled to secede? This essay will pursue an answer to that question. And it will do so from the perspective of *liberal egalitarian* morality.

Liberal egalitarianism is complex. The liberal canon is rich and nonmonolithic, and this complexity is largely due to a tension that resides within the concept of liberty. Interestingly, this tension may vindicate a permissive as well as a restrictive approach to what I will call *liberal-to-liberal* secession. (This term denotes that both mother-state and secessionist group are liberal in outlook; they are committed to maintain (in the case of the former) or establish (in the case of the latter) a polity with liberal institutions.) I

delimit the theme of this essay to concern this category of divorce only. Thus, from hereon, when speaking of ‘secession’ or ‘a right to secede’, I will solely be referring to instances in which a group of liberal secessionists seek divorce from a liberal state.

Why is this delimitation interesting? Let me name one very good reason. A discussion of liberal-to-liberal secession has the potential for clearly exposing the topical tension within liberal morality. To elaborate: When we consider secession from liberal states, the concept of political divorce may still signify *a liberating venture*. And the promotion of liberty rings intuitively laudable to liberals. However, in this context it may also be plausible to regard secession as morally unjustified, as long as the mother-state rules according to *certain standards of good government*. The reason is simple: The value of political divorce may now, in some sense, be reduced, and because state breaking potentially violates other crucial liberal commitments, then it should – on balance – be restricted.

1.1 More on Delimitation and Concepts

It is important to clarify that the theme of this essay is the morality of *unilateral* secession. This is different from *consensual* secession, in which both parties agree to the split. Further, I am concerned with discussing the liberal grounds for recognizing a *claim-right* to secede, which, in Hohfeldian terms, denotes that the granting of such a right places a corresponding duty on the part of the mother-state to abstain from attempts to preclude the divorce¹. Moreover, a *liberal state* is understood as a polity that acts in accordance with the demands of liberal morality. In practice, that entails respecting and upholding a comprehensive set of liberal rights. (I will elaborate on what that requires as the essay unfolds) Further, I only consider liberal states that are *well established*, which is to say that their institutions are thoroughly consolidated; they have been stable and well-functioning for a long time.

During the last decades the number of published studies on the morality of secession has increased dramatically. Several positions claim to be of the liberal kind, but they are not all equally entitled to that characterisation. In this essay I will consider the

¹ The American legal theorist Wesley Hohfeld (1964) clarified the concept of a ‘claim-right’, which he identified as one out of four forms of right. It has the following form: “A has a claim that B φ if and only if B has a duty to A to φ ” (Wenar 2006: Section 2.1).

two perspectives that most naturally attire in liberal draperies. These are the so-called *Just-Cause*- and *Choice*-approaches. As will become clear, they can both be developed from fundamental liberal commitments, and, accordingly, appear as good candidates for a proper liberal theory of secession.

My discussion is delimited by leaving out the *Nationalist*-approach. That approach regards a group's so-called 'ascriptive' characteristics (i.e. being a nation or a people, sharing a common ethnicity or an encompassing culture, etc.) as factors of utmost moral importance, and which (may) ground a unilateral right to secede (Buchanan 1997: 38)².

My delimitation does not imply that the other two perspectives are the dominant contemporary voices in the debate on secession. On the contrary, to say that the Nationalist-approach is equally dominant would be to state things mildly³. My delimitation rather signifies that the *liberal* credentials of the Nationalist perspective on secession are controversial. Indeed, the whole so-called "liberal-nationalist" venture, which has caught on in contemporary political philosophy, is highly disputed (in some quarters) as a profound liberal project⁴. It is out of sensitivity to this dispute that I will abstain from addressing Nationalist-theories of secession.

1.2 A Note on Methodology

An important part of doing moral theory is to address the question of how one's normative position can be justified. Our beliefs must be grounded. We want to provide a rationale for why the prescriptions advocated by our theory have moral force: *Why* is it so that we *ought* to follow *these* prescriptions? The enterprise of moral reasoning thus naturally entails making epistemological assumptions. Epistemology is the study of how we can come to know things. And in the sphere of moral theory, this naturally centres on how normative relevance can be shown. There are two especially influential approaches to that effect. These are *foundationalism* and *coherentism* (Jamieson 1991: 480).

² These approaches go under different denominations in the literature. Norman (2006: Chapter 6), for one, uses the same terminology as I do. The Just-Cause approach is often referred to as 'Remedial Right Only' theories, whereas the Choice-approach is sometimes deemed as a 'Primary Right' theory of secession. To be more precise, the latter category contains two versions, the 'Plebiscitary' (which is equal to the Choice-approach) and the 'Ascriptivist' (which corresponds to Nationalist-theories). See e.g. Buchanan (2006; 1997). Margaret Moore (2006: 59) offers yet another terminology for the two latter approaches: 'Individual autonomy' and 'collective autonomy', respectively.

³ For an excellent anthology on the Nationalist-approach, which includes contributions from both its partisans and opponents, see Moore (ed.) (1998).

⁴ For examples of the liberal-nationalist position, see e.g. David Miller (1995) and Will Kymlicka (1995). For a powerful critique, see Barry (2001). Tan (2004) provides a somewhat reconciliatory attempt.

In the foundationalist mode of justification, moral force is conferred upon beliefs by grounding them in a set of foundational principles, which themselves are regarded as *self-evidently* justified. Dale Jamieson puts it as follows:

Foundationalism is (roughly) the view that systems of belief are justified in virtue of the logical relations that obtain between beliefs that require justification, and other beliefs that themselves are in no need of justification (1991: 480).

The following may illustrate the structure of a foundationalist process of justification⁵: In our daily life we often make *moral judgments*. If we are witnessing, say, an unprovoked physical assault on a person, we may intuitively judge that act as morally wrong. Perhaps we focus on the empirical fact that the victim had not in any way (at least as far as we could instantly estimate) posed a threat to the physical integrity of the attacker. This feature of the situation may appear to us – by way of “gut-feeling” – as morally relevant. We are thus (somehow) urged to deem the attack as immoral.

If we are then asked to justify that specific judgment, we may point to a more general *rule*, which says, “It is wrong to physically assault a person who has done nothing to provoke such an act”. What we do here is to seek justification by reference to a higher level of generality. One may, however, object that our stated rule itself is in need of justification. If so, the process is forced on. The rule can be grounded in one or more *ethical principles*. This can be, for instance, some expression of the Liberal Harm Principle, which, to put it bluntly, “prohibits one [...] from wrongfully setting back another’s interests” (Wellman 2005: 12, n. 9).

Ethical principles themselves may in turn be justified by reference to a full-fledged *ethical theory*, which may include several principles, and perhaps an explicit statement of their priority. At this (ultimate) level of justification we may also find *metaethical* claims, which, rather than discussing “what actually is right and wrong, [...] [are] concerned with the meaning and significance of calling something right or wrong” (Harrison 2005: 588-9). Put differently, metaethics addresses the nature of morality itself.

So, foundationalism holds that it is possible to justify a normative assertion by referring to one of higher generality. The process of justification ends when we have gone

⁵ See e.g. Beauchamp (1991: 85-6).

from the most particular beliefs to the most general ones. The latter are accordingly assumed to be self-evident. It is sensible to describe this approach as a *top-down* justification.

The other dominant approach to justification, *coherentism*, does not conduct justification solely in that direction. Instead it goes back and forth in (continuous) search for coherence between beliefs of various generality. Coherentism has found its most influential expression in John Rawls's *method of reflective equilibrium* (cf. Rawls 1951; 1999).

Rawls's point of departure is the coherentist view of truth, which claims that true statements are hallmarked by them fitting logically together (or cohering) with other statements (Wyller 1997: 176). Thus, all levels in the justificatory process are simultaneously justified *by virtue of their coherence*. And only so, holds the coherentist, can beliefs be justified. This marks her position as clearly distinct from that of the foundationalist, which, to reiterate, holds that "some beliefs, those that are foundational, are justified independently of their relations to other beliefs" (Jamieson 1991: 482).

To elaborate, the coherentist acknowledges that normative assertions can be of different generality. The crucial point is that none of these beliefs are sacrosanct. They can all be modified. Most interestingly, (even) ethical foundational principles can be altered for the sake of placing them in equilibrium with conflicting judgments of lower generality. In Rawls's own words:

By going back and forth, sometimes altering the [principles], at others withdrawing our judgments and confirming them to principle, I assume that eventually we shall [reach] [t]his state of affairs I refer to as reflective equilibrium. It is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their derivation. [...] But this equilibrium is not necessarily stable. It is liable to be upset by further examination [of judgments and principles]. Yet for the time being we have done what we can to render coherent and to justify our convictions of social justice (1999: 18).

Rawls claims that usage of the method of reflective equilibrium may render a discussion of metaethical issues – e.g. the debate on ethical cognitivism and emotivism – superfluous to the justificatory process (Wyller 1997: 176). This is interesting. To elaborate, consider the following passage by Rawls:

[T]he objectivity or the subjectivity of moral knowledge turns, not on the question of whether ideal value entities exist or whether moral judgments are caused by emotions or whether there is a variety of moral codes the world over, but simply on the question: does there exist a reasonable method for validating and invalidating given or proposed moral rules and those decisions made on the basis of them? (Rawls 1951:177)

Not surprisingly, on Rawls's view, his own method constitutes such a reasonable one. Thus, if so, when utilizing the method of reflective equilibrium, the scope of the justificatory process can be delimited by *leaving out metaethical considerations*.

This thesis will also be methodologically delimited in that way. I will not discuss any beliefs above those of the *ethical principles of liberalism*⁶. Note, however, that this is not for the Rawlsian reason. Instead: Because I am concerned with exploring how liberal morality can accommodate a right to secede, it is not necessary to discuss how liberal principles themselves can be justified. My theoretical discussion will simply be conducted *within* the confines of liberal morality. Put differently, I am not concerned with the justification of *liberal principles*, but rather with whether these principles can justify *a right to secede*.

So, I will be at pains to convince liberal egalitarians that the theory I put forward is consistent with their morality. And, further, that it constitutes the best possible approach to the morality of secession (under the liberal position). Thus, as my theory will in this sense be grounded within liberal egalitarianism, its justification will be apparent to those who already endorse liberal morality. Consequently, my methodological approach can be regarded as largely foundationalist.

On the other hand, as intimated earlier, due to the complexity of liberal egalitarian morality, the liberal theorist must navigate among incongruous ethical commitments, and eventually sanction the vindication of some and the sacrifice of others. Tensions must be handled. Specifications must be made. This implies that my theory of secession cannot accommodate all liberal beliefs. Instead it will have to compromise some for the sake of

⁶ I will, however, comment briefly on liberal moral ontology, and its view on what it takes for a social entity to qualify as a moral agent. This is done in Chapter 2, in relation to the issue of liberalism's compatibility with the concept of a group right.

obtaining *a coherent position*. My methodological approach may thus, in that simple sense, bear some resemblance to Rawlsian reflective equilibrium⁷.

In the end, however, I regard the justification of my position as done by reference to its substantive prescriptions for secession, and their derivation from liberal egalitarian foundational principles. It is the validity of these principles that ultimately confer normative force onto my theory, not (merely) that it constitutes a coherent position (as it, however, hopefully does).

So, the concessions that will be made are not effected for the sake of obtaining justification (through coherence). They are simply necessary to obtain a coherent liberal position, in which the chosen concessions constitute what I find to be the mildest possible sacrifice of liberal foundational principles. It is thus my belief that liberal egalitarians will approve these imperative concessions, and that my theory will be regarded as properly grounded in their political morality.

Now, the following should be clear from this brief sketch of moral justification: The theory I develop in this essay claims to be justified within a certain normative position. It is thus not exempted from external criticism (nor internal, for that matter). On the contrary, liberalism (as goes for any morality) can (and indeed should) be contested by rival ethical principles and theories. Clearly, my liberal theory of secession remains to be defended from such rivalling perspectives. To provide such a defence, however, must be a task for another occasion.

Before I put this brief outline to a close, let me emphasize that the two approaches to justification that I have presented here are not without their problems. To address these properly would require a vast amount of additional space. I will nonetheless mention a couple: Even though *descriptive* foundationalism is rather (but not wholly) uncontroversial in most quarters, the idea that some beliefs can be self-evident in the sphere of *morality* is much more disputed (Jamieson 1991: 481)⁸. This problem would of

⁷ To be precise, it bears resemblance to the method of *narrow* reflective equilibrium, in which principles and judgments (that are contained in the equilibrium, e.g. liberal ones) are not encountered by criticism from alternative moral perspectives. In contrast, in the method of *wide* reflective equilibrium, rival ethical principles are taken into account (Daniels 2003: Sections 3.1-2). This distinction is not explicitly drawn in Rawls's initial depictions of the method; it is, however, emphasised in his later work *Justice as Fairness: A Restatement* (see Rawls 2001: Paragraphs 10.1-4).

⁸ Dale Jamieson elaborates by providing the following example of a descriptive belief: "My belief that there are such things as beliefs may be an example of a self-justifying belief, for it is true in virtue of my believing it to be true (although some would deny even this). It is a long way from this kind of self-justifying belief, however, to an interesting moral theory" (1991: 481).

course strike my theory with full power if its justification were claimed to apply outside liberal morality. Due to the topical conditionality of my argument, however, I can leave out any further considerations about foundationalism and truth-claims.

In response to coherentism, it has been pointed to the following impalpable implication: The method of reflective equilibrium could yield immoral positions if applied by people with immoral views – for instance if used by the Nazis. This can be viewed as “an instance of an old problem for coherence theories: there can be an indefinite number of sets of beliefs in reflective equilibrium, yet there may be no reason to suppose that any of these constitute a true theory” (ibid.: 482). So, because coherentism allows for revision at all justificatory levels, a theory might no longer be a liberal one if too many liberal beliefs are abandoned. Indeed, the method of reflective equilibrium puts a genuinely liberal outcome in jeopardy, in a way that foundationalist justification does not. A theory’s liberal character will therefore have to be decided after hand, by assessing its substantial content.

I will now bring this first chapter to a close with a brief presentation of the chapters to come.

1.3 The Essay in Outline

Chapter 2 provides a preliminary account of how foundational commitments of liberal egalitarian morality apply to the issue of secession. I first argue that the notion of a group right is compatible with liberal moral ontology. I then go on to demonstrate how two incongruous conceptions of liberty, to which liberals are equally committed, may yield two alternative and rival perspectives on secession. Most importantly, these two perspectives offer different views on the justification of political power. Secession is the taking of territory. A right to secede must therefore include a valid claim to territory. The secessionists must be justified wielders of political power.

The ‘negative’ conception of liberty is focused on freedom from external restrictions. In its ultimate form this notion of liberty applies to the issue of justification. It yields an intuitive expression of the liberal idea of *popular sovereignty*, which holds that a social arrangement is unjustified unless it is made acceptable to each person who is to live under it. Thus, popular sovereignty seemingly forms a *prima facie* case in favour of secession, grounded in a *presumption of political liberty*.

On the ‘positive’ conception of freedom we are not truly free unless we live under conditions (i.e. freedom of expression, freedom of the press, compulsory education, etc.) that enable us to continuously scrutinize our current ends. This is held to be an objective interest on the part of each person. This mode of thought can be extended to yield a liberal commitment to *fixed standards of good government*. These standards (e.g. democracy) are absolute. Popular sovereignty cannot dismantle them. A *presumption of justified political power* is thus raised on the part of polities that rule in accordance with these standards. This forms a *prima facie* case against secession from such states.

The ideas of popular sovereignty and fixed standards of good government seem to stand in an incongruous relationship. Still, liberal morality is committed to both of them. I therefore suggest that a proper liberal theory is hallmarked by it being one in which the tension between these two commitments is *brought along as far as possible*. That is, if one of the two perspectives on secession is able to go far in (1) honouring both commitments, then a presumption is raised in favour of that perspective as the best liberal approach to secession. To thwart that presumption, the rival approach must (2) provide a rationale for why matters – all-things-considered – should be otherwise. This is what I call the two-fold *Tension-Requirement*.

Chapter 3 will elaborate on the Just-Cause approach to secession, which is grounded in the presumption of justified political power. I demonstrate how this perspective can largely accommodate the tension between popular sovereignty and fixed standards of good government. It thus partially fulfils the Tension-Requirement. Accordingly, the Just-Cause approach is presumptively vindicated as the proper liberal theory of secession. Chapter 3 also contains a brief discussion of the relevant factors that may ground a secessionist right under this approach.

In *Chapter 4* I explore (the most plausible version of) the rival liberal perspective. I discuss a recent Choice-theory courtesy of Christopher H. Wellman. Wellman’s theory is likewise capable of (going some way in) satisfying the first part of the Tension-Requirement. This creates a more level playing field between the two liberal perspectives. So, to vindicate their own approach as the best liberal theory of secession, both sides will have to submit (further) arguments to that effect. The second part of the Tension-Requirement must be fulfilled.

So, the partisans of Just-Cause theory are forced to sharpen their arguments. I suggest, however, that they can so do. It is possible to develop a liberal argument from ‘securing the legitimate interests of the nonsecessionists’, which demonstrates that the secessionist demands for self-rule should be accommodated by way of granting *intra-state* autonomy arrangements. If this argument goes through, then Wellman’s theory is incapable of fulfilling the second part of the Tension-Requirement. (His own arguments to that latter effect are found to be deficient.) The presumption in favour of Just-Cause theory as the proper liberal approach to secession is thus restored.

In *Chapter 5* I develop a novel contra-secession argument that further vindicates the Just-Cause approach. The argument from ‘plurality’ adds leverage to the liberal egalitarian case against the permissive Choice-perspective, by demonstrating how liberal morality confers value to societal pluralism. If secession entails a reduction in diversity, then the argument from plurality strengthens the case in favour of intra-state autonomy solutions to the secessionist conflict.

In *Chapter 6* I summarize my findings, and point to how they may influence future research on the morality of secession.

Foundational Commitments of Liberal Egalitarianism

In this chapter I will outline the political morality of liberal egalitarianism. This is the foundation from which I will develop a theory of secession from a liberal state. First I will briefly address the assertion that liberalism cannot theoretically accommodate the ontological possibility of group rights. I will argue that this is not the case. In the main part of the chapter I spell out the foundational commitments of liberal egalitarianism. I argue that the issue of secession demonstrates how these commitments stand in a somewhat incongruous relationship. The tension between them gives rise to two rival presumptions – one in favour of and one in disfavour of – a right to secede. Both must be taken seriously, and they can be viewed as diametrically opposed starting points for a theory of secession.

2.1 Individualism and Universalism

Liberalism has often been criticised for its adherence to individualism. In the recent debate between liberals and the so-called communitarians, some of the critique issued by the latter has centred on the implausibility of individualism's social ontology (see e.g. Buchanan 1989: 852-3; Avineri & de-Shalit (eds.) 1992; Mulhall & Swift 1996). However, it is important to draw a distinction between ontological and ethical individualism. The latter "concerns what matters most morally, not what exists" (Buchanan 1991: 8).

Ethical individualism "attaches supreme ethical significance to the human person" (Kelly 2005: 9). Collectives are not moral subjects on a par with individual human beings. Justifications of moral and legal rights must ultimately be grounded in the well-being and interests of individuals (Buchanan 2004: 413). Accordingly, collective social entities hold only instrumental value. As Alan Gewirth puts it, as long as "[i]t is the goods and rights of individuals that constitute the primary criterion or end of moral rightness", then, "the preservation of the state or of the nation is valuable and worthy only insofar as this is of benefit to its individual members" (1982: 235).

Universality means that the principles of a normative theory apply to all moral subjects on equal terms. Following Thomas Pogge,

[a] moral conception, such as a conception of social justice, can be said to be universalistic if and only if (A) it subjects all persons to the same system of fundamental moral principles; (B) these principles assign the same fundamental moral benefits (e.g. claims, liberties, powers, and immunities) and burdens (e.g. duties and liabilities) to all; and (C) these fundamental benefits and burdens are formulated in general terms so as not to privilege or disadvantage certain persons or groups arbitrarily (2002:92).

So, to the liberal, *individuals* are what matters, and they *all* matter *equally*.

2.2 Liberalism and Group Rights

I will now address what has been interpreted as a theoretical difficulty for liberal theory, namely, to recognize the concept of a group right. My position on this matter is on the whole in agreement with the perspective of Allen Buchanan (cf. 2004; 1991). Therefore, it is natural to start off with giving him the bench. When combined, Buchanan holds, individualism and universalism have led liberalism to be

at minimum suspicious of the very concept of a group right. This suspicion has led at least some liberal thinkers to underestimate the role that group rights, including a right to secession, can play in protecting individuals and the values they affirm in their lives – particularly the value they find in being members of groups (1991: 8-9).

On my reading, this quote reveals that what Buchanan has in mind is a “thin” understanding of a group right, one that roughly corresponds to the sum of individuals’ rights when they are exercised collectively. This becomes clearer in the following quote. On Buchanan’s account, *group rights* are

ascribed to *collections of individuals*, and can only be *exercised collectively* or at least on behalf of the collective, usually through some mechanism of political representation whereby a designated individual or a subset of the group purports to act for the group as a whole (1991: 74-5, emphasis added).

The two italicised conditions crucially distinguish group rights from the rights of an individual. Rights of the latter type are “ascribed to an *individual*, who in principle can

exercise the right *independently*, in her own name, on her own authority” (ibid.: 74, emphasis added).

Thus far the notion of a group right is compatible with ethical individualism. Group rights are morally justified by reference to the well-being and freedom of individuals: they are given an “individualistic” justification. Note, however, that this strategy only works as long as the granted right is a *legal* right, and where the *moral* justification is done with reference to the individual group members. The concept of a group *moral* right is problematic because that would require groups – *qua* groups – to be qualified as moral subjects on a par with individual human beings (Buchanan 2004: 414). So, a group right must be conceived of in the following sense: The right is designated to a group; if it is violated, compensation is owed to the group *qua* group, not to its members *qua* individuals; the group is not, however, the possessor of moral rights; their compensation is solely effected due to their possession of group *legal* rights, which are given an individualistic justification.

Let me illustrate these points somewhat by considering an example. The Canadian philosopher Will Kymlicka has written extensively on (what he regards as) the compatibility between liberalism and minority rights. His flagship argument for having the liberal state recognize certain sorts of group rights for minority cultures is based on what I called an individualistic justification. His argument proceeds in two steps: (1) Cultural membership is instrumentally important for ensuring a person’s well-being and self-respect; (2) in some cases cultures can only be secured through special group rights; liberals should therefore be open to accommodate such rights for cultural minorities (cf. e.g. Kymlicka 1989: esp. Ch. 8 and 9). Clearly, this is an individualistic moral justification of a group legal right. The argument’s compatibility with ethical individualism rests crucially on the descriptive premise in (1). If cultural membership is not instrumentally valuable, then the argument fails in that respect.

Whether one agrees with Kymlicka’s particular version of this justificatory strategy is not important, as long as the strategy itself is deemed congenial. If so, then one must admit that liberalism can indeed accommodate such group rights. This is the view I endorse. In fact, it strikes me as rather strange that a liberal might entertain the idea that her political morality cannot recognize a collective right of this sort. As Christopher Wellman rightly points out, such denial would imply that the concept of state sovereignty

is theoretically precluded. That would be a highly unpalatable consequence, and one that liberals cannot accept. Liberalism, writes Wellman,

requires the state to stand in positions of sovereignty in a number of contexts. In other words, liberalism requires a number of group rights. For instance, all criminal punishments are collective rights. [...] [V]irtually all liberals admit that reasonably just governments have the right to monopolistic control over criminal punishment. Thus one cannot deny the acceptability of all group rights without simultaneously rejecting the legitimacy of all existing states (1999: 36-7).

To sum up, what I have done in this section is the following: I have dismissed the claim that liberalism (due to its individualism and universalism) must deny the ontological possibility of (any sort of) group rights. Obviously, if this was not the case, then a discussion of a right to secede, which is necessarily a group right, could not even get off the ground. It remains to be seen, however, whether other rights that must come into consideration will outweigh a prospective right to secession. It is to this task I turn in the subsequent chapters. But to be able to do so, it is necessary to first elaborate on the normative commitments of my theory.

2.3 The Political Morality of Liberal Egalitarianism

Liberalism is concerned with the interests and well-being of individuals. It is individuals that matter, and they matter equally. According to Will Kymlicka, liberal political theory can be developed from the fundamental assumption that each person has an essential interest in “leading a good life, in having the things that a good life contains” (1989: 10). That claim may seem to be banal, he says, but it has important consequences:

For leading a good life is different from leading the life we *currently believe* to be good – that is, we recognize that we may be mistaken about the worth and value of what we are currently doing. We may come to see that we’ve been wasting our lives, pursuing trivial or shallow goals and projects that we had mistakenly considered of great importance (ibid.).

Put differently, we have “an essential interest in revising those of our current beliefs about value which are mistaken” (ibid.: 12). But it is important to note that this does not imply

that an individual's current ends should be subject to modification by other than herself. Writes Kymlicka:

[W]hile we may be mistaken in our beliefs about value, it does not follow that someone else, who has reason to believe a mistake has been made, can come along and improve my life by leading it for me, in accordance with the right account of value. On the contrary, no life goes better by being led from the outside according to values the person doesn't endorse. My life only goes better if I'm leading it from the inside, according to my beliefs about value (ibid.).

These insights form the basis of liberal political theory. And they can be spelled out in the form of two preconditions for leading a life that is good:

One is that we *lead our life from the inside, in accordance with our beliefs about what gives value to life*; the other is that we *be free to question those beliefs*, to examine them in the light of whatever information and examples and arguments our culture can provide (ibid.: 13, emphasis added).

To establish these preconditions the liberal endorses a set of rights and liberties, which are crucial means to secure our (two-fold) essential interest in leading a good life:

Individuals must therefore have the resources and liberties needed to live their lives in accordance with their beliefs about value [...] Hence, the traditional liberal concern for *civil and personal liberties*. And individuals must have the cultural conditions conducive to acquiring an awareness of different views about the good life, and to acquiring an ability to intelligently examine and re-examine these views. Hence, the equally traditional liberal concern for *education, freedom of expression, freedom of the press, artistic freedom, etc.* These liberties enable us to judge what is valuable in life in the only way we can judge such things – i.e. by exploring different aspects of our collective cultural heritage (ibid., emphasis added).

So, firstly, the liberal state is committed to enable each person to freely pursue her own chosen ends. I will refer to the rights that secure this freedom as *liberty-rights*. Secondly, each person should be endowed with *competency-rights*, which provide the conditions that facilitate intelligent examination and re-examination of one's current projects and goals. Both are necessary to lead a good life.

Now, there are two important lessons to be learned from this outline of liberal political theory. I will attend to them in the rest of this chapter. Firstly, Kymlicka's outline is praiseworthy because it manages to capture in few words the intricate relationship

between two famed conceptions of liberty, *negative* and *positive* freedom⁹. Obviously, liberal egalitarianism is closely connected to both of them, and I will take care to elaborate upon the content of these commitments. As will become evident, the two conceptions of liberty are often regarded as irreconcilable. This leads up to the second lesson: Their putative incongruity carries the seedbed for a serious tension within liberal egalitarian morality. Upon this I will also elaborate.

2.3.1 Negative Liberty: Freedom to Choose

As seen above, a vital premise of liberal theory is that my life only goes better if I get to live it ‘from the inside’. This yields the liberal idea that a person should be free to pursue her desired ends. Negative liberty is *freedom from* something. All relevant restrictions on liberty are *external* to the person (Kelly 2005: 53). The only permissible restrictions are those inherent in the concept itself. The prime example of such a regulatory principle is what Joel Feinberg calls ‘the Harm-principle’ (cf. e.g. Feinberg 1973). In its simplest form, it holds that “individuals (at least those possessed of normal decision-making capacity) ought to enjoy liberty of action so long as their actions do not harm the legitimate interests of others” (Buchanan 1997: 56).

The individual is entitled to ‘spheres of non-interference’. Certain limits must therefore be placed on state power. Whatever reasons and goals an individual may have for her action, what is important is that she is free to act (Galipeau 1994: 89). Isaiah Berlin, who made the distinction famous, puts it as follows:

I am normally said to be free to the degree to which no man or body of men interferes with my activity. [...] If I am prevented by others from doing what I could otherwise do, I am to that degree unfree; and if this area is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved. [...] You lack political liberty or freedom only if you are prevented from attaining a goal by human beings. Mere incapacity to act is not lack of political freedom (2002: 169).

This quote alludes to an important claim on the part of theorists in the negative camp, namely that *liberty itself* must be distinguished from the *conditions for its use*. This is where it

⁹ In the literature ‘liberty’ and ‘freedom’ are often used interchangeably. As Ian Carter (2003) points out, there have been some attempts to establish a clear distinction between these concepts, but they have not been influential. I thus follow the dominant approach when I treat liberty and freedom as synonymous.

goes wrong, so they say, for the partisans of positive freedom (who allegedly mix up the two). Berlin elaborates:

It is important to discriminate between liberty and the conditions of its exercise. If a man is too poor or too ignorant or too feeble to make use of his legal rights, the liberty that these rights confer upon him is nothing to him, but it is not thereby annihilated (ibid.: 45).

It is not that the conditions for the use of liberty are unimportant. On the contrary,

[t]he obligation to promote education, health, justice, to raise standards of living, to provide opportunity for the growth of the arts and the sciences, to prevent reactionary political or social or legal policies or arbitrary inequalities, is not made less stringent because it is not necessarily directed to the promotion of liberty itself, but to conditions in which alone its possession is of value, or to values which may be independent of it. And still, liberty is one thing, and the conditions for it are another (ibid.).

What's more, partisans of negative liberty in the Berlin tradition would be apt to hold that positive state actions (such as those mentioned in Berlin's quote) indeed amount to violations of individual liberty. But, so they claim, such violations may nevertheless be justified by respect for other values (Waldron 1987: 133). Berlin himself, for instance, clearly recognizes the desirability of introducing

a uniform system of general primary and secondary education in every country, if only to do away with distinctions of social status that are at present created or promoted by the existence of a social hierarchy of schools in some Western countries [...] (Berlin 2002: 47-8).

The state is indeed justified in taking such equalizing measures. But when it so does, we should acknowledge, Berlin holds, that liberty *is* sacrificed for the sake of some other good. Conceiving of liberty in the positive sense cannot circumvent this.

2.3.2 Positive Liberty: Getting Our Choices Right

The theorists of positive liberty focus on other liberal premises. Each person has an essential interest in leading a life that is good. That entails engaging in a continuous process of scrutiny concerning what is valuable in life. As seen above, liberals assume that a person recognizes that she may be mistaken in her value attributions. This implies that

some projects are more valuable than others; we can go wrong in our choices. I will elaborate on this assumption because it is not always well understood.

It has been attributed to liberals that they are “sceptics about the rational defensibility of different conceptions of the good” and, that “such a moral scepticism underlies the liberal belief in the illegitimacy of governmental interference in the way people lead their lives” (Kymlicka 1989: 17). Hence, (so the saying goes) liberals get their commitment to individual liberty. This interpretation of liberal morality (and its defence of liberty) is, however, a fallacy. Following Kymlicka:

The liberal position in fact rests precisely on the denial of [that] position [...]. Consider Mill’s argument for liberty in both *On Liberty* and *Utilitarianism*. Some projects *are* more worthy than others, and liberty is needed precisely to find out what is valuable in life – to question, re-examine, and revise our beliefs about value [...]. This is one of the main reasons why we desire liberty – we hope to learn about the good – and Mill says that our desire should be respected because it is not a vain hope. Liberty is important not because we already know our good prior to social interaction, or because we can’t know about our good, but precisely so that we can come to know our good, so that we can ‘track bestness’, in Nozick’s phrase. If we couldn’t learn about the good, a crucial premise in Mill’s argument for liberty would collapse. [...] [He argues] for a right of moral independence not because our goals in life are fixed, nor because they are arbitrary, but precisely because our goals can be wrong, and because we can revise and improve them (ibid.: 18).

So, value is not subjective. Some projects are more worthy than others. We want to get our choices right, and individual liberty is the best means to this end. But one is unfree (in the positive sense) unless one’s pursuit of the good life is *conducted under certain conditions of competency*.

To elaborate: One must have the capacity for autonomous choice regarding one’s own goals and projects. Competency-rights facilitate a person’s ability to fairly evaluate alternative conceptions of the good – including the one currently held. Short of this ability, an individual is not truly free. Positive liberty is not a freedom from something, such as state interference. Rather, it is a *freedom to* something.

Further: The negative conception of liberty, holds the positive theorist, is not sufficiently sensitive to the threats to freedom – via infringements on competency – that stem from a society with social and economic inequalities (Hampton 1997: 171).

Redistributive institutions must therefore be established. This insight is crucial to liberal egalitarianism. Put simply, endowment-inequalities may influence our choices, and this constitutes an infringement on our freedom. How can this be?

On the positive view, external restrictions are not the only possible hindrance to liberty. Equally conceivable are the *internal* restrictions, which may stem from “psychic and character-based obstacles to action” (Galipeau 1994: 94). This alludes to the link between positive liberty and *autonomy*. On the Kantian view, positive freedom was about individual agents exuding rational self-government (or autonomy, for short). It is a view of freedom as “the non-restriction of options – whether by other men’s obstruction or by factors internal to the agent himself, such as weakness of will, irrational fantasies or inhibitions or uncriticized socialization to conventional norms” (Gray 1995: 57-8).

Jon Elster has argued, in a famous work on irrationality, that an agent can develop ‘adaptive preferences’ (Elster 1983). The idea is that in situations where a person cannot achieve some desired goal, she is prone to gradually change her preferences for it. This change of preferences comes as a result of irrational self-persuasion, which happens because

[i]t is difficult to live with the disappointment of unsatisfied preferences, and one way to deal with this disappointment is to persuade oneself that the unattainable goal was not in fact worth seeking. The extreme version of this phenomenon is the case of the ‘contented slave’, who adapts to her enslavement by claiming she does not want freedom (Kymlicka 2002:15-6).

In spelling out the content of positive freedom, John Gray sides with this point:

Many modern threats to freedom – propaganda, media manipulation and the tyranny of fashion – can be understood, I think, only by invoking some such conception of autonomy. Freedom may be curbed by means other than coercion, and it is a virtue of the idea of freedom as autonomy (in contrast with the more stringently negative view) that it accommodates this fact (1995: 58).

Will Kymlicka sums up the importance of positive liberty in liberal egalitarian morality as follows. Liberalism, he writes,

is not just concerned with the freedom to act on our present desires. That, of course, is not an insignificant freedom. [...] But amongst the people who are leading their lives from the inside are people

who have been brainwashed into accepting certain ends as their own, and who are discouraged from trying any other ways of life, through the systematic control of socialization, of the press, and of artistic expression. And this is unacceptable for the liberal. [...] [F]or Mill the conditions under which people acquired their ends were important: it mattered whether their education and cultural socialization opened up or closed off the possibility of revising their ends. He believed that this was important because people not only want to act on their choices, they also want to get those choices right (1989: 18-9).

Now, against this backdrop it becomes clear why liberal egalitarians are concerned with equalizing material and natural resources: It is vital in securing the conditions for intelligent choice. Autonomy enables a proper pursuit of negative liberty. And, thus, the two-fold preconditions for leading a good life are fulfilled¹⁰.

Let me now attempt in brief (and somewhat summary) fashion to crystallize a tension that exists between the two conceptions of liberty. On the negative view, a person's freedom is completely *voluntaristic*: There are no standards that qualify one's actions as free other than the will-aspect; whatever I choose to do, I am exercising freedom if I act upon my own current desires; freedom is to live my life from the inside. On the positive conception, however, freedom gets connected to *rationality*. Here the idea is that my freedom (if it is to qualify as that) is contingent upon whether my behaviour exudes adherence to fixed standards of rational decision-making: My actions are not truly free unless they are the result of an informed and competent choice.

Obviously, these two approaches are somewhat incongruous. As Waldron puts it, liberals have profound respect for the importance of living one's life from the inside. However,

[l]iberalism is also bound up in large part with respect for rationality, with the discipline of self-knowledge and clear-sightedness, and with the celebration of the human capacity to grasp and understand the world. But those capacities are not always in play when people make decisions about how to act in society. So that sense of the importance of *reason* in human decision-making is bound to introduce some tension into

¹⁰ The positive conception of liberty may be spelled out in a more extreme version than the one I have outlined here. On the Hegelian view, positive freedom is achievable only in "a harmonious and integrated society" (Gray 1995: 57). This means that an individual cannot be truly (positively) free unless she engages in complete "submission to and participation in the order of a good society" (Waldron 1987: 131). Isaiah Berlin has powerfully criticized this version of the conception (cf. e.g. Berlin 2002), in which freedom becomes equated with social order. Jeremy Waldron argues that liberals must repudiate the extreme version of positive liberty, because it fails to accommodate the idea of "standing back [from one's] social order and subjecting it to critical evaluation" (1987: 131-2). As should be clear at this stage, liberal egalitarians will side with Waldron's assertion.

a theory organized around respect for decisions made by individual men and women as they are in ordinary life (1987: 132-3).

Now, this tension may be somewhat reconciled in liberal egalitarianism. It is plausible, I think, to suggest that the two conceptions can go together, as long as one leaves semantics aside. That is, by putting to rest the debate about what the “true” meaning of liberty really is, it seems that liberal egalitarians can base their morality on insights from both traditions. The rationale for this assertion could go something like this: The negative theorists can accept that equality is important (albeit they would not dream of confusing it with (what they regard as) liberty proper), whereas the positive theorists can say that it is indeed possible to draw a distinction between negative liberty and the conditions for its use (albeit they would never dream of allowing (what they regard as) liberty proper to be detached from the latter).

Such a balanced “compromise” can be illustrated by the prevailing view of distributive justice in liberal egalitarianism. This view holds that redistributive schemes must be ‘endowment-insensitive’ and ‘ambition-sensitive’ (Kymlicka 2002: 74). Those two requirements reflect adherence to both conceptions of liberty. A person should be left free to determine for herself which goals and projects to pursue. Therefore redistribution must be ambition-sensitive. This respects negative liberty. The conditions for her choice, however, must be equalized before she chooses. This honours the idea of rational self-government. By making redistribution endowment-insensitive, positive freedom also gets its due. I will refer to this sort of balancing as the *intra-state reconciliation* of liberal egalitarian commitments.

In the introductory chapter I dropped a hint that normative principles are often spelled out abstractly. When brought together and specified, their relationship may carry the seedbed for irreconcilable tension. As we have just seen, this is no less true for liberal morality. The tension between negative and positive liberty is, however, seemingly eased in a satisfactory way in the intra-state context. Can this be achieved in other contexts as well? That need not be so. A change of context may introduce a range of morally relevant differences. It is therefore necessary to spell out the proper interpretation of liberal principles for each separate context.

As we will now see, the issue of secession produces a change of scenery. The discussion of the proper relationship between state and individual is lifted to what I will call the *meta-state* level. We thus move from discussing state interference in the life of individuals within a jurisdiction, to addressing the justification of the very institutional framework of the state itself. What does liberal egalitarian morality have to say here?

2.4 Liberal Egalitarianism and the Morality of Secession

Let me start this section by declaring an assumption. I will assume throughout this essay that a well-functioning state must be *territorially* defined. This assumption should be rather uncontroversial. I will nevertheless provide a brief rationale for it.

States are territorially defined for good reasons. That feature enables them to perform vital functions, such as securing peace and protecting the moral rights of their citizens. It is, however, possible to imagine that peace and security could be provided short of a territorially defined state. Christopher Wellman asks us to consider a situation where people could affiliate to different private security agencies “according to religion, eye color, preference for a particular set of rules, or by consent” (2005: 14). Could such an arrangement successfully replace the territorial state? Wellman answers in the negative:

Peace would be unavailable in the absence of a decisive and accepted method of enforcing common rules and adjudicating conflicts. Because conflicts typically occur between parties in spatial proximity (since conflicts require interactions, and we most often interact with those nearby), and because a judge can peacefully and decisively settle conflicts only if she has authority over both parties, a judge must have power over all those who share spatial proximity. Thus, since conflicts will proliferate and escalate if those around us follow different rules and appeal to competing authorities, we cannot politically sort ourselves according to religious affiliation, sexual preference, or eye color as long as we live among people of varying religions, sexual preferences, and eye colors. [...] [H]opefully this quick sketch explains why states must be territorially defined (ibid.: 14-5).

I believe it does. The only way in which the private alternative could function satisfactorily was if all citizens chose to affiliate with the *same* firm. And, further, that the citizenry *remained* homogenous in that respect. I will not assess here the probability of that scenario. It strikes me as plausible, however, to assume that it is minimal.

Secession is the taking of territory. And, crucially, it is the taking of a part of a territory that is currently claimed by an existing state. Accordingly, as Allen Buchanan puts it, “rival theories of secession must be understood as providing alternative accounts of what it takes for a group to come to have a claim to territory” under these circumstances (2006: Section 2.1). A territorial claim on the part of group G is established by demonstrating that G is the justified wielder of political power in that territory. To make the case for a right to secede one must therefore demonstrate that the secessionists have a superior claim to the territory in question.

So, to answer the question of what liberal egalitarianism has to say on secession, we must explore its approach to *the justification of political power*. I will now argue that the commitments of liberal morality can yield two presumptions to that effect, which appear to stand in an incongruous relation to each other.

2.4.1 Negative Liberty and the Voluntaristic Approach to Political Power

The negative conception of liberty puts individual freedom from external restrictions at centre-stage. This negative freedom includes the right of individuals to freely choose with whom to associate. This freedom of association may be invoked for various purposes. It applies to religious, and commercial, as well as political ones (Buchanan 2006: 255). When called upon in the latter sense, it forms the principle of *(individual) political liberty*. In its ultimate form, this liberty lay claim to determine the very design of the polity itself. Thus, the liberal commitment to negative freedom seemingly raises the presumption that a state is (fully) justified in wielding political power only insofar as it enjoys the (unanimous) consent of its citizenry.

Why is this approach favourable to liberals? Jeremy Waldron points to the intellectual connection between liberal theory and the ideas of the Enlightenment. The Enlightenment, he writes, was characterized

by a burgeoning confidence in the human ability to make sense of the world, to grasp its regularities and fundamental principles, to predict its future, and to manipulate its powers for the benefit of mankind (1987: 134).

Further: The social world,

even more than the natural world, must be thought of as a world *for us* – a world whose workings the individual mind can grasp and perhaps manipulate deliberately for the benefit of human purposes (ibid.: 134-5).

These assumptions feed the following view on the justification of social arrangements:

[A] social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it; the consent or agreement of these people is a condition of its being morally permissible to enforce that order against them (ibid.: 140).

So, liberal theory is committed to a *consent-based* approach to justification. Because a given social arrangement (A), is not the necessary result of a divine order, a law of nature, tradition, nor any other antecedently given authority, *and*, on the premise that human persons have the capacity to scrutinize rules and principles, then it becomes paramount that the people who are to live under A are recognized as *the ultimate source of justification*. This is the idea of *popular sovereignty*. A is not justified unless its content is made acceptable to the people. Put differently, the arrangement must “serve [their] interests” (Buchanan 2004: 102).

Against this backdrop it should be clear how the commitment to individual political liberty may yield the perhaps most intuitive expression of the idea of popular sovereignty: Popular sovereignty may be honoured by having all individuals exercising their right to individual political liberty through an act of actual consent, for instance in the form of a justification-conferring referendum. What better way to let the people decide? ¹¹ It is therefore conceivable that liberal morality may form a *prima facie* case in favour of a right to secession, grounded in a *presumption of political liberty*.

¹¹ Please note that I am being deliberately vague at this stage as to what the idea of popular sovereignty necessarily amounts to. To say that the people are “the ultimate source of justification” can obviously refer to justification being contingent upon an explicit act of *actual* consent. However, it can also signify that any justified arrangement must attend to the people’s objective interests; if these interests can be defined, then the existence of an act of actual consent may be viewed as superfluous; what’s more, if the people do not sanction arrangements that serve these objective interests, then justification can still be conferred, even against the explicit popular will; consent is thus interpreted as *hypothetical*. I will elaborate on this ambiguity, and its important implications, in Chapter 3.

2.4.2 Positive Liberty and the Rationalistic Approach to Political Power

Positive liberty is concerned with a crucial part of a person's ability to lead a good life. Certain conditions must be in place to ensure proper scrutiny of one's current ends. These conditions are spelled out in the form of competency-rights, which, in a sense, may be regarded as the "servants" of liberty-rights. They are important because they better the conditions for a person's pursuit of negative liberty. They are means to that end. On the other hand, *those means themselves are not disposable*. What is the rationale behind this?

Recall that liberal egalitarians are concerned with securing the conditions for a *continuous* scrutiny of one's current projects. Obviously, the liberal mode of such scrutiny cannot be achieved unless liberal institutions (who secure the topical conditions) are in place. Interestingly, for the liberal this implies that certain objective standards of good government are identifiable. And if this assertion is true, then, on reflection, no liberal approach to the justification of social arrangements seems to be acceptable unless it secures these specific conditions (for the proper pursuit of individual liberty). But if a wielder of political power can only be justified as long as it attends to a certain standard, then the idea of popular sovereignty (as it was spelled out above) is fundamentally challenged.

In other words, the positive conception of liberty yields a liberal commitment to *fixed standards of good government*. This leads to a rationalistic approach to political power. Rather than having a polity approved through popular consent (which implied that any arrangement was acceptable as long as it was vindicated by popular approval), it's justification is now *functionally* defined: A state that performs well on fixed measures of good government is justified, regardless of what the citizenry may express. This grounds what I will call *the presumption of justified political power* on the part of a well-functioning liberal state. Accordingly, liberal morality seems to be consistent with a *prima facie* case against a right to secede from such states.

Of course, the problem with embracing this latter presumption is that the idea of popular sovereignty, on the face of it, gets eradicated. And the problem putatively goes the other way around as well. If we instead go along with the presumption of political liberty, we end up with violating the idea of fixed standards of good government: If the people have sovereign authority on matters of justification, then there is nothing to

prevent them from issuing illiberal institutions. We have here identified what Raino Malnes calls *the problem of incongruity*.

According to Malnes, there is a general tension in modern political philosophy. When grappling with the issue of justifying political power, contract theorists must ask how the idea of popular sovereignty can be reconciled with the notion of substantive standards of good government (which is apparently equally plausible). Writes Malnes:

While stressing the sanctity of the popular will, [some contract theorists] hold certain political arrangements to be right or wrong whatever people think of them, and suggest that these are not incongruous points of view. I believe their efforts reflect a general tension in modern political thought. The emphasis on freedom of choice in political as well as personal affairs does not root out a constant preoccupation with universal demands on actions and institutions, be they grounded in human dignity, welfare, order, or some other moral or social value. The question is whether these seemingly contradictory strands of argument really can be reconciled (1988: 63).

The gravity of this problem for liberal theory is substantial. If I was on target above, then it should be clear that liberal commitments clash over the issue of justifying political power (and thus over secession). A further quote by Malnes is instructive:

Take, for instance, the idea that every adult man and woman is entitled to political rights characteristic of democratic institutions: the right to vote for representatives to a legislative assembly, to give public expression to political opinions, to organize political parties, to stand for political office, etc. [...] [The point is] that a political system may pass the test of popular approval even though it does not accord citizens such rights. [...] It appears, in other words, that the idea of popular sovereignty rules out a principled adherence to democratic values. Such values have no bearing on the moral assessment of political arrangements unless citizens themselves value democracy, which is always an open question (ibid.: 62).

What, then, should the liberal egalitarian do to solve this apparent incongruity within her political morality? As I will now argue: By drawing on a distinction introduced by H.L.A Hart (1961), between ‘self-embracing’ and ‘continuing’ freedom, we may get a bit further.

2.5 In Defence of Rationalism: On Self-Embracing and Continuing Freedom

Let me briefly elaborate on the rationalistic approach to political power. A state that performs well according to a certain standard (such as securing liberal rights) is regarded as justified. The polity is justified by virtue of the fact that it is rational to agree to be governed under these substantive standards. And it is rational, so the liberal holds, because, objectively speaking, each person has an essential interest in leading a life that is good. This universal human interest requires liberal institutions. A system of equal rights and liberties is not a subject for discussion. It stands rock-solid, even in the face of popular disapproval. How plausible is this idea?

According to H.L.A. Hart, freedom can be either *self-embracing* or *continuing*. The two forms are mutually exclusive. Following Raino Malnes:

A person enjoys *continuing* freedom if the same (manifold) options lie open to him (morally speaking) at every moment of his life, so that he has no second-order option to remove any alternative from the feasible set. A person enjoys *self-embracing* freedom if the permissible courses of action encompass the opportunity of renouncing parts of the same freedom at will (1988: 83).

This distinction is fruitful for demonstrating the morally relevant difference between allowing for freedom to be self-embracing in the intra-state context, and to allow for the same in what I above called the meta-state context.

Liberals are prone to allow for substantial restrictions on state interference in an individual's private sphere. For instance, a person may want to waive (a portion of) her liberal rights, because that would be necessary for her to live in an illiberal enclave within the liberal state. As long as competency-rights are in place – and thus, that the person's choice was made under satisfactory conditions – it is acceptable to leave her alone with her decision. Indeed, modern liberal states contain several such less-than-liberal private spheres, for instance in the form of religious communities, which are allowed to display (some) deviations from individual rights and liberties in their religious practices. Liberals can be expected to favour the individual's preferences in such situations. As a consequence, individual liberty is indeed self-embracing in this private, intra-state context, albeit within limits (consider e.g. voluntarily engaging in comprehensive circumcision of

one's sexual organs, or being voluntarily killed and eaten by a cannibal¹². The former practice may perhaps be viewed as existing within a grey area, whereas most liberals would concede that the latter example clearly falls into the category of 'instances to be interfered with, for the sake of human dignity').

However, even though one may accept that individual freedom can be (widely) self-embracing in the private spheres *within* a liberal jurisdiction, it does not follow that the design of the jurisdiction *itself* may be subject to the same self-embracing freedom (which in this context would amount to unrestricted popular sovereignty). Even though a person may choose to waive her liberal rights at T_0 , she still lives within a liberal state, and thus has the opportunity for revising her choice. As long as the polity itself secures these rights, she can reclaim them at will at T_1 . This opportunity to revise one's current ends is objectively valuable. Because a single jurisdiction can only be designed in one way at a time, liberal institutions cannot be dismantled as seen fit. Thomas Pogge explains:

While our society can contain many different kinds of communities, associations, and conceptions of the good, some liberal in character and others not, it can be structured or organized in only one way. If my neighbor wants to be a Catholic and I an atheist, we can both have our way, can both lead the life each deems best. But if my neighbor wants the U.S. to be organized like the Catholic Church and I want it to be a liberal state, we can *not* both have our way. There is no room for accommodation here, and, if I really believe in egalitarian liberal principles, I should politically support them and the institutions they favour against their opponents. These institutions will not vary with the shifting strength of groups advocating various religious, moral, or philosophical doctrines (Pogge 1994: 217).

Obviously, this insight is highly instructive for our purposes. Pogge's outline strikes me as hitting the nail on the head. I further believe that liberal egalitarians will also endorse his assertion. At least so they should. If not, they would fail to balance the tension inherent in their morality, between popular sovereignty and substantive standards of good government. That is, their commitment to the latter would be *completely* eradicated, for the sake of honouring the former.

Unfortunately, however, some sort of eradication appears to be inevitable. As seen above, the rationalistic approach to political power seems to frustrate popular sovereignty.

¹² The latter example found its empirical counterpart in the infamous Meiwes-Brandes case in Germany (cf. Harding 2003).

This leads to the following tentative proposition: The tension between negative and positive liberty can be reconciled *within* a jurisdiction, whereas when confronted with the issue of justifying *the liberal institutional framework itself*, the two liberal egalitarian commitments seem to clash irreconcilably. What I called intra-state reconciliation cannot be obtained at the meta-jurisdictional level. We end up with *meta-state irreconcilability*.

So, the rationalistic approach to the problem of incongruity seems to entrench the tension between liberal commitments, rather than resolving it. In that sense this resort is not a “solution” at all. Nonetheless, the rationalistic alternative appears, at least thus far, to be the most plausible liberal approach to political power. But, again, that alternative apparently entails eradicating the idea of popular sovereignty altogether. And, as I shall now argue, it is not satisfactory to leave things like this.

2.6 On the ‘Tension-Requirement’ and Liberal Theory Proper

Etymology suggests that liberal morality is primarily concerned with the importance of liberty. As seen above, however, the concept of liberty comes in different conceptions. On Jeremy Waldron’s view, the debate over the proper conception has been fierce and unconstructive:

The intensity and singlemindedness with which positions are taken and defended in this debate is surprising. Liberty is a concept which captures what is distinctive and important in human agency as such and in the untrammelled exercise of powers of individual deliberation, choice, and intentional initiation of action. Surely no-one can can [sic] really believe that what this *is* is something simple or self-evident, or that there can never be honest disagreements in this area. [...] Our sense of what it is to have and exercise freedom is bound up with our conception of ourselves as persons and of our relation to value, other people, society, and the causal order of the world (1987: 130-1).

Therefore,

[t]o say then that a commitment to freedom is the foundation of liberalism is to say something too vague and abstract to be helpful, while to say that liberals are committed fundamentally to a particular conception of liberty is to sound too assured, too dogmatic about a matter on which, with the best will in the world, even ideological bedfellows are likely to disagree (ibid.: 131).

Not surprisingly, Waldron's recommendation is to seek out a balance between the negative and the positive conception of liberty. It should be apparent at this stage that that is a recommendation liberal egalitarianism takes seriously. Therefore, in spelling out my theory of secession, I will be at pains to *pay due respect to the complex nature of the concept of liberty*. This complexity can best be handled, I believe, by pressing ourselves to come up with *the best possible balancing* of the somewhat incongruous commitments.

By this I mean that regardless of which commitment one chooses as the "basic" principle of one's theory, one must provide a rationale that shows (A) how the other commitment can still be sufficiently honoured within one's approach. And, regardless of whether eradication of the other commitment can be avoided: One must also show (B) why one's chosen alternative (nonetheless) constitutes the best overall solution to the problem of incongruity. In consequence, this helps identify the best liberal approach to secession. Put bluntly, what I am prescribing here is simply that we *bring along the tension as far as we can*. Call this methodological prescription the (two-fold) *Tension-Requirement* for a proper liberal egalitarian theory (of secession).

Due to that requirement I do not yet consider this chapter's defence of the rationalistic approach to political power as a sufficient reason to reject the presumption of political liberty (although I think that that latter presumption should indeed be rejected): I have not (yet) provided a rationale for (A*) how the idea of popular sovereignty can be somewhat accommodated within the rationalistic approach. And, regardless of whether A* succeeds: I have not (yet) shown (B*) why the voluntaristic approach to political power (which grounds the presumption of political liberty) may nevertheless be regarded – all-things-considered – as the poorer alternative. In the next chapter I will pursue A*. Chapters 4 and 5 will address B*.

The Presumption of Justified Political Power

In the previous chapter I argued that rationalism seemed to be the best approach to the justification of political power. The drawback was the putative eradication of the commitment to popular sovereignty. In the first part of this chapter I will argue that the rationalistic approach can resist this latter implication. By detaching the idea of popular sovereignty from actual-consent theory, it becomes plausible to claim that the liberal tension is largely resolved. If so, then the first part of what I called the Tension-Requirement is fulfilled. This raises a presumption in favour of *Just-Cause theory* as the proper liberal approach to secession. In the second part of the chapter I will discuss the specific principles of such a theory. However, the list of injustices that can ground a right to secede from a liberal state will prove to be sparse.

3.1 Why Rationalism does not Undermine Popular Sovereignty

As mentioned in the previous chapter, a theory of secession must include an account of the justified wielding of political power. We further saw that the liberal mode of justification is *consent-based*: Any social arrangement must be made acceptable to each citizen. Call this idea (i). Closely related to this idea is the view that the people are the ultimate source of justification. This was presented as (ii) the idea of *popular sovereignty*. It is uncontroversial to claim that both of these ideas are central in liberal morality. Moreover, as will become clear, they are closely connected.

In 2.4.1, (i) was presented in its most intuitive interpretation, namely as the idea of actual-consent. This interpretation yielded a voluntaristic expression of popular sovereignty (VE): What better way to honour the people as the ultimate justification-conferring source than to require an act of actual consent on their part. VE helped form what I called the voluntaristic approach to the justification of political power (VJ). The unquestionable importance of (i) and (ii) gave merit to that approach. There was a problem, however: If the actual consent of the people is necessary to honour the venerable idea of popular sovereignty, then that idea appears to be irreconcilable with the

notion that certain forms of good governance (such as democratic rule) is justified regardless of the popular will. This latter commitment (to fixed standards of good government) yielded the rationalistic approach to the justification of political power (RJ). In what follows I will argue that liberal morality can, by endorsing RJ, largely reconcile this problem of ‘meta-state irreconcilability’.

It is important to note that the liberal defence of consent and popular sovereignty is uncontroversial only as long as these ideas are spelled out in *abstract* fashion. Now, it is true that VE may have an intuitive ring to it. But that is not to say that VE is the only plausible way in which the abstract ideas of (i) and (ii) can be *concretised*. As we will now see, by giving them a rationalistic expression (RE), the apparent irreconcilability can be circumvented.

3.1.1 Two Versions of Consent-Theory

Liberal theory may clearly foster incongruous views on the issue of justification. In Chapter 2 I demonstrated how VJ and RJ could be developed from central liberal commitments. What I did not bring markedly to the fore, however, was that *both* approaches can lay claim to be consent-based (albeit I did allude to this possibility in Section 2.4.1, note 3): Liberal consent-theory simply contains two traditions.

In its perhaps most intuitive version, the theory of consent turns on an act of *actual* consent on the part of the citizenry: If I do not literally approve to be governed by state S, then S is not justified in having such dominion over me. Even if S is a well-functioning liberal democratic state, its justification can be instantly dismantled if I decide to renounce my consent to be governed by it. It is this rendition of consent-theory that fits into VJ.

The theory of *hypothetical* consent, on the other hand, does not focus on the aspect of will at all. Instead, this account is concerned with reason: “The test of a just society [...] is not whether the individuals who live in it have agreed to its terms, but whether its terms *can be represented* as the object of an agreement between them” (Waldron 1987: 142). This version of consent-theory fits in with RJ.

But if consent-theory comes in two versions (which initially may seem equally plausible), then it seems very likely that the idea of popular sovereignty can be concretised in two (likewise initially equally plausible) ways as well. We have already alluded to the voluntaristic concretisation, VE, which incorporated the idea of actual-consent. To say

that the people are ‘the ultimate source of justification’ can obviously mean that justification requires an explicit act of actual consent on the part of the citizenry.

However, one can also hold that the people are the ultimate source of justification in the sense that any justified arrangement must attend to *the interests* of the people. This interpretation means that it is these interests that ultimately matter, and that a justified social arrangement must adequately serve them. Now, if these interests can be objectively defined (for instance by reference to the universal wants and needs of human beings), then the existence of an act of actual consent may be viewed as superfluous; consent is thus interpreted as hypothetical. What’s more, if I sanction arrangements that are contrary to my objective interests, then justification of these arrangements can still be conferred, even against my explicit will. This is the rationalistic interpretation of popular sovereignty, or what I above called RE.

The upshot of this is simple. If justification is contingent upon actual consent, then the commitment to fixed standards of good government cannot be coherently included: If (i) is interpreted as actual-consent, then (ii) constitutes VE; and, under VE, meta-state irreconcilability applies. The following should also be clear from this brief sketch: If we instead adhere to RE, then the tension may be reconciled; if consent can be hypothetical, then the idea of popular sovereignty is given a rationalistic expression, and can thus be accommodated within RJ; accordingly, the meta-state irreconcilability ceases to apply. By endorsing RJ it appears as if we can go far in honouring both popular sovereignty and fixed standards of good government.

If I have thus far been on target, then the first part of the Tension-Requirement is fulfilled: Under RE, the liberal tension is largely reconciled. Now notice the following: Under the premise that the Tension-Requirement is valid, this fact (RE’s reconciliatory ability) *by itself* raises a presumption *in favour of RJ as the proper liberal approach to political power*. The rival approach, VJ, appears, at least for the time being, as incapable of achieving anything similar when it comes to reconciliatory ability¹³.

In addition, we can build on the conclusory case for the presumption by pursuing the second part of the Tension-Requirement. In this context, that entails further demonstrating the relative weaknesses of VJ as compared to RJ. There are two strategies

¹³ In Chapter 4 I will discuss an attempt to show that Choice-theory can achieve reconciliation. This can be done, so the argument goes, as long as some rationalistic elements are incorporated into the model of political power.

to that effect. Firstly, VJ relies on VE, which in turn relies on the idea of actual-consent. We can therefore challenge VJ by (a) showing that the idea of actual-consent is not theoretically coherent. Secondly, we can (b) demonstrate that liberals should reject VJ because the trade-offs involved in endorsing it is too costly relative to a vindication of RJ. I will start with (a).

3.1.2 The Actual-Consent Approach and Its Putative Deficiencies

If the demonstration of actual consent is the only way to confer moral justification on a polity, then *neither existing, nor prospective, states would qualify as justified wielders of political power* (cf. e.g. Buchanan 2004: 243). At best we can only have partially justified ones – in which some of the citizens express their consent, while others do not. If this alleged empirical fact is true, then it seems that the partisans of actual-consent must give up the possibility of justifying any real-world polity.

Now, this implication may sound unfortunate and counter-intuitive indeed. Isn't it plausible to assert that justification can be conferred upon at least some existing states? Liberal democracies, at the very least, must somehow be good candidates in that respect. It should be uncontroversial to claim that this suggestion accords well with our intuitions. So, there must be something wrong with the requirement of actual consent. (The theory of hypothetical-consent is, of course, not afflicted with this problem at all.)

The partisans of actual-consent might concede that their approach may run counter to some of our intuitions. But they may nevertheless reply that perhaps it is our intuitions that should give way here: On reflection, even though existent liberal democratic states would necessarily get a tarnished reputation in the topical sense, that implication should not sway us into denying that the actual-consent approach itself can nevertheless be valid. Call this reply X.

It should be rather easy, I think, to realise the validity of X. Take the analogy to the concept of justice. It is possible to show that the ultimate principles of justice should *not* be grounded in *facts*. As G.A. Cohen puts it:

When a fact about human incapacity is said to exclude a principle because it can't be obeyed, we may then ask what we should say about the putatively excluded principle on the counterfactual hypothesis that it could be obeyed. And it is only when we thus *clear the decks of facts about capacity*, and get the answer to that

counterfactual question, that, it seems evident to me, we reach *the normative ultimate* (Cohen 2007: 5, emphasis added)

Further:

It makes perfect sense to say that “we ought to eliminate as much injustice as we can”. The statement is consistent with the claim that “You ought to do A implies that you can do A”, but not with the view that feasibility establishes the bounds of justice. If justice is, as Aristotle said, each person getting her due, then it is her due irrespective of the constraints that might make it permissible to give it to her (ibid.).

Similarly, the restraint imposed by the empirical lack of capacity (i.e. the very low probability of enjoying unanimous actual consent) – which are displayed by former, existent, and possibly future, states – should not *on its own* count as a sufficient reason to reject the normative principle exerted by the actual-consent approach. This is so simply because that principle may be valid regardless of the facts of our world.

Closely related to this, the important distinction between *ideal* and *nonideal* theory may also strengthen X. Following John Rawls, ideal theory is “a necessary complement to nonideal theory without which the desire for change lacks an aim” (1996: 285). So, even though the theory of actual-consent may not be feasible as a practical measure of justification in our nonideal world, its principles may nevertheless be valid, and of important use, in the realm of ideal theory. Evidently, the first objection to actual-consent theory is not mortal.

The plausibility of X notwithstanding, when faced with the utopian character of the consent requirement, several partisans of the actual-consent approach have resorted to a so-called ‘tacit’ conception of actual consent. That latter conception is famously associated with John Locke, who regarded, for example, a person’s continued residence in the polity as a sufficient display of actual consent (cf. 2002: paragraphs 119-22). This leads up to the second objection: The tacit version seemingly fails, because it can be shown that *actual-consent theory presupposes some sort of legitimate authority*. (Again, the hypothetical version of consent is not stricken by this problem.) Allen Buchanan explains:

The problem with taking continued residence as a sign of tacit consent is that there is no such thing as a natural act of consent, at least not in the case of consent to political power. For some bit of behaviour –

for example, saying “Aye” in an assembly – to count as consent there must be certain conventions already in place; for example, conventions establishing where and when groups must meet if they are to count as assemblies, who is qualified to participate, [...] and so on. To think that there is some act that could count as consent prior to a process that establishes such conventions is as incorrect as thinking that an exchange of words between two people could count as a contract in the absence of a framework for legal institutions (2004: 244-5).

This strikes me as a plausible objection to the *tacit* version of actual-consent theory¹⁴. But can we thus regard the actual-consent approach *in general* as invalidated? Things may not be quite as simple.

Imagine the following scenario: The citizens of state S have not been given the opportunity to approve or disapprove of S as the wielder of political power. Instead, S has established its political institutions through more or less coercive means. Hence, the government of S is not justified on the actual-consent model. S’s institutions, however, are at present quite robust, and they cover the whole citizenry with regard to upholding the law and spreading information through well-established channels of communication. In this situation, it should be obvious that S *is able to define* for its citizenry what counts as a valid act of consent. So, even if the conditions for a well-functioning tacit-consent approach were absent *before* S (coercively) established its rule, the prospect for relevantly exercising that approach *now* is quite bright. In other words, if a wielder of political power – regardless of its justification (or lack of such) – is in place, then it has the ability to define a sufficient set of rules. Thus, on the premise that actual-consent theory is valid, nothing should keep us from requiring S to arrange a justification-conferring referendum. The problem, of course, is that this conclusion may be hard to resist even if the polity at present adheres to liberal standards of good government. Still, on its own, the second objection to actual-consent theory also fails. Consequently, strategy (a) does not work.

So, in order to argue persuasively against the actual-consent approach, it seems that we must have recourse to the criticism issued in Section 2.5: If actual-consent theory is recognized, then *liberal institutions may be dismantled as seen fit*. To reiterate: From the liberal perspective this is an unacceptable implication because it seemingly amounts to a

¹⁴ Another famous objection stems from David Hume. It holds that continued residence cannot qualify as an act of tacit consent because many people in many states may not have a real choice here: The costs of exit may be high and the prospects of bettering one’s situation elsewhere may be dim (Buchanan 2004: 244). Thus, to remain in place should not be regarded as a generally valid act of consent.

complete eradication of the commitment to fixed standards of good government. Put differently, on balance, liberals seem tentatively prone to reject actual-consent theory due to the trade-offs involved in endorsing it. To use a metaphor, when placed on a pair of scales that measure the relative importance of liberal commitments, the commitment to fixed standards of good government seems likely to outweigh the idea of actual-consent. We have thus moved on to consider strategy (b). In what follows I will elaborate on the configuration of the scales, both concerning which objects that are placed on it, as well as the weight of each object.

Now, if I was on target in 3.1.1, then it should be clear that the objects on the scales are as follows: On the VJ-side we have the idea of actual-consent *per se*, because that idea is no longer accompanied by the liberal notions of consent and popular sovereignty. This is so because the RJ-side can also accommodate these abstract liberal commitments. On the RJ-side we find the liberal commitment to fixed standards of good government. The significance of that commitment was discussed earlier (in Section 2.5).

The partisans of actual-consent theory may, however, try to strengthen their case by arguing that another object should be added to their side of the scales. The rationale for this goes as follows: Is it not unfortunate, they might say, that the current objection (to actual-consent theory), which is meant to invalidate VJ, is premised on the validity of the rival position RJ? This, so they object, amounts to begging the question. To reply: Recall that we have thus far established a *presumption in favour of RJ as the proper liberal approach* to political power. Thus, the burden of proof falls on the partisans of actual-consent theory. To thwart the presumption in favour of RJ, they must show that VJ – regardless of the two approaches’ respective reconciliatory ability – is nonetheless the best liberal approach to political power. I will now address a possible attempt to that latter effect.

3.1.3 Is the Rationalistic Approach Really a Proper Justification?

Says the actual-consent theorist: “Fine. It may be true that the rationalistic approach presumably outperforms its voluntaristic rival when it comes to reconciling the tension between liberal commitments. However, that is the only presumption-raising fact yet submitted. Now, I propose that the burden of proof should be turned on its head,

because *RJ does not constitute a proper justification* at all. Its relative weakness is that it disregards the crucial idea of *political obligation*". What does this mean?

It is often assumed that moral justification cannot be conferred upon a polity unless that polity enjoys the right to be obeyed by its citizenry. That is, a *self-imposed political obligation* on the part of each citizen is regarded as a necessary condition. It follows from the very nature of obligation that it cannot be established short of an act of actual consent: If I consent to an arrangement, then it is my agreement that makes it impermissible for me to do what it would otherwise be permissible for me to do (Waldron 1987: 136). In other words, if I consent to be governed, then I am obliged to obey the wielder of political power. Conversely, in the absence of my consent, there can be no such obligation. Therefore, when viewed in this way, justified political power is contingent upon the explicit approval of those being governed.

Obviously, if true, this adds considerable leverage to actual-consent theory. In fact, if political obligation is required to justify political power, then VJ is vindicated, not merely as the proper *liberal* approach to justification, but also as *the only feasible* approach whatsoever. This would alter the configuration of the objects on the scales: As long as RJ is not a proper justification, then the VJ-side of the scales can be extended. It would thus include the idea of actual-consent, *and* the ability to provide a cogent approach to justification. Clearly, this would affect the level of the scales. But how plausible is this reconfiguration?

According to Allen Buchanan, a satisfactory account of *the morality of political power* must answer the two following questions:

(1) [U]nder what conditions is it morally justifiable for some agent or agents to wield political power (the *agent-justifiability* question), and (2) under what conditions do those upon whom political power is exercised have sufficient reasons to comply with its demands (the *reasons-for-compliance* question)? (2004: 238, emphasis added).

On Buchanan's view, a state can satisfactorily answer both questions when it governs in a certain fashion: The wielder of political power is morally justified if and only if it

(1) does a credible job of protecting at least the most basic human rights of all those over whom it wields power and (2) provides this protection through processes, policies, and actions that themselves respect the most basic human rights (ibid.: 247).

Buchanan grounds his assertion as follows:

The chief moral purpose of endowing an entity with political power is *to achieve justice*. Given the state's coercive and monopolistic character and the fact that it necessarily involves inequality of power, nothing short of this could justify creating an entity so capable of causing harm, infringing on freedom, and creating or maintaining inequalities (ibid., emphasis added)

Importantly, this rationale asserts cogency from a *liberal* perspective. Indeed, the provision of justice is *the* hallmark of the liberal conception of what states are primarily for:

The Moral Equality Principle requires us to take very seriously certain basic interests that all persons have; it grounds both positive and negative duties of justice [...]. One exceptionally important way of promoting these fundamental interests is by ensuring that the basic human rights are protected. Adequate protection of basic human rights requires the exercise of political power – an agency to make, apply, and enforce laws, and to approximate supremacy in so doing.

So long as political power is wielded for the sake of protecting basic human rights and in ways that do not violate those same rights, it is morally justified – unless those over whom it is exercised have a right not to be coerced to respect basic human rights. But there is no right not to be coerced to respect basic human rights, so long as coercion is used in ways that do not themselves violate basic human rights (ibid.: 248).

It is interesting to note how well Buchanan's rationale accords with liberal egalitarian morality (as it was outlined in the previous chapter): It is *individuals* that matter, and they *all* matter *equally*; some individual interests are *objective*, and these are crucially maintained through a set of *individual rights*; a *polity* is necessary to secure those rights; and, one's personal freedom is *not self-embracing in the meta-state context* (i.e. one is not free to dismantle the very arrangement that constitutes the only guarantor of liberal rights, namely the liberal state).

In sum: The two questions that a theory of political power must address are both answered by invoking the principle of equal regard for persons. We are all morally

required, under the Moral Equality Principle, to promote universal basic human interests. This gives us sufficient *reasons to comply* with a social arrangement that so does. And, naturally, that arrangement fulfils the *agent-justifiability* condition (Buchanan 2004: 249).

Now, on Buchanan's account, if both questions are answered satisfactorily, then *political legitimacy* is established. It is not additionally required that the wielder of political power enjoys the actual (and thus obligation-conferring) consent of its citizenry. Strikingly, none of the two conditions for political power turns on the concept of obligation. So, an entity has political legitimacy

if and only if it is *morally justified in wielding political power*, where to wield political power is to (make a credible) attempt to exercise supremacy, within a jurisdiction, in the making, application, and enforcement of laws (2004: 235, emphasis added).

Interestingly, if this argument goes through, then a proper justification of political power (as political legitimacy) is thus detached from political voluntarism. Instead, it is given a rationalistic expression. In contrast, an entity has *political authority*

if and only if, in addition to (1) possessing political legitimacy, it (2) has the right to be obeyed by those who are within the scope of its rules; in other words, if those upon whom it attempts to impose rules have an *obligation to that entity* to obey it (ibid.: 237).

So, what is the upshot of this? If Buchanan is correct in asserting that agent-justifiability and reasons-to-comply on the part of the citizenry are necessary and sufficient conditions for justifying political power, then the hypothetical version of consent theory can do the job. Accordingly, the attempt to invalidate RJ as a proper justification fails. And the configuration of the scales remains the same.

Buchanan's argument is in accordance with, and helps elaborate, the defence of RJ that I have already presented (in Section 2.5). But, again, there is one thing that is still throwing a spanner into the works: The mandatory liberal commitment to individual political liberty *does* ground the idea of actual-consent. At least, this is so given that political liberty is interpreted in its *ultimate* form. And actual-consent is still incompatible with RJ. Buchanan's defence of political legitimacy as a proper justification does not change this. Therefore, to eventually dispose of the idea of actual-consent – and thereby

also VJ – we must address the question of how much weight we shall ascribe to each of the incongruous commitments that are situated on the scales.

I will now argue that actual-consent *on its own* – that is, when detached from the uncontroversial liberal commitment to popular sovereignty – is not a pronounced liberal idea at all. And this is so simply because the trade-offs that are associated with endorsing it are not acceptable to liberals. This will help substantiate the assessment that the VJ-side of the scales does not carry much relative weight. But first, let me briefly mention one final suggestion, S, that may be forwarded to circumvent having to make this latter move (which necessarily involves a sacrifice, namely the rejection of the principle of individual political liberty interpreted in its ultimate form). (Note, however, that S will crack up when faced with the imminent invalidation of actual-consent as a crucial liberal idea.)

Is it perhaps so, that both justificatory approaches can defend their place within liberal egalitarianism? Maybe the liberal can view political *legitimacy* as the best applicable measure of justification in our *nonideal* (or facts-restricted) world, whereas political *authority* is (nevertheless) the liberal *ideal* (which exudes ‘the normative ultimate’, in Cohen’s phrase). In that sense, RJ and VJ respectively, are both compatible with liberal theory. This is suggestion S. (If S is valid, then we might dispose of our scales altogether.)

One scholar that sides roughly with S is A. John Simmons. On his view, no existing states have the right to be obeyed. This is so because actual-consent theory *is* right, and no states enjoy unanimous consent. But, “this does not imply that all states are equally bad”: Some states are “decent and benevolent”, and they

may thus be justified by reference to the good that they do, which is just to say that they merit our support, and we thus have moral reason to provide it. But saying that some states merit support is not at all the same as saying that they have a right to direct and coerce us, which we are bound to honour (1999: 769-70).

In other words, the rationalistic approach to the justification of political power may be a practical tool for distinguishing between ‘benevolent’ and ‘evil’ real-world states. Even though both categories are unjustified in the voluntaristic sense, the rationalistic approach

can help us explain why the former category is (at least) more justified than the latter¹⁵. This suggestion may seem reasonable. I will now argue, however, that it fails to capture the core of liberal egalitarian morality.

3.1.4 Why Actual-Consent Is Not Sacrosanct

Suggestion S is premised on the view that the idea of actual-consent itself is a liberal stronghold. And, so its partisans could say, even though actual-consent may not be applicable as a practical measure of justification in our nonideal world, it is nevertheless so sacrosanct as to constitute the ultimate moral point of reference for liberal ideal theory. This is wrong.

As Christopher Wellman rightly asserts, the actual-consent approach, in its pure form, is a *libertarian*, rather than a liberal idea. Most liberal theorists, he claims, view the state as justified when it functions well according to certain standards of good government (1995: 155). Wellman's latter assertion is a descriptive claim, which can be settled by conducting a meta-study, whereas his first assertion is more interesting for political philosophy. The two are, however, connected. The validity of the latter assertion can be grasped, I think, by viewing it quite simply as a result of the validity of the former.

As should be clear at this stage, the political morality of liberal egalitarianism *is* committed, in important respects, to a functional (or rationalistic) approach to justification. The fact that the liberal commitment to individual political liberty *may* (if radically interpreted) ground a rival position (VJ), does not alter this fact. There *are* weighty reasons to endorse RJ (cf. e.g. Sections 2.5 and 3.1.1).

Further, we have earlier seen that liberal egalitarian morality contains a problem of incongruity at the meta-state level. This problem can be sought resolved in different ways. But the tension itself invalidates neither of the two approaches that aim at resolving it. The tension does, however, imply that *neither approach can be bought for free* (as the metaphor with the scales should have clearly – albeit perhaps a little ungracefully – demonstrated). For example, if liberal egalitarians go for RJ, then the inevitable rejection of actual-

¹⁵ Please note that Simmons uses a terminology in which a 'justified' polity is (roughly) similar to what Buchanan regards as a polity with 'political legitimacy'. Further, for Simmons, 'legitimacy' is consonant with what Buchanan calls 'political authority' (cf. Simmons 1999: 740, 745-6). Due to the varying usage of these terms in the literature, I have chosen to operate with the more neutral term '(morally) justified wielder of political power' as a supra-concept, which encompasses both of the above conceptions. (As should be clear by now) I utilize the denominators 'rationalistic' and 'voluntaristic', respectively, to differentiate between the two different conceptions (of moral justification) wherever necessary.

consent – and, accordingly, the radical interpretation of individual political liberty – represents the cost of that endorsement. The decisive question can thus be posed as follows: Which approach represents the best bargain? Another way to pose that question is to ask how much weight is assigned to each of the two scale pans, VJ and RJ.

I will now attempt to further elaborate on the configuration of the scales in that respect. Consider the following two claims:

- (1) Individuals do not have a moral right to put the liberal rights of neither themselves, nor others, in (ultimate) jeopardy (cf. Section 2.5).
- (2) The justification of the liberal state is contingent upon actual consent.

It is simply not coherent to hold 1, while also holding 2. The liberal egalitarian must make a choice.

Realising this dilemma, even John Locke (whose writings have often been invoked by libertarians) abstained from endorsing a pure actual-consent approach. On the contrary, he placed clear moral restrictions on public choice, when it pertains to the issue of institutional justification (Malnes 1988: 77-84). (I will say more on this aspect of Locke's theory in Chapter 5.) What's more: Even Hobbes, in spite of his premise of moral subjectivism (which, as alluded to in Chapter 2, is an illiberal idea), did rely on a conception of certain objective human interests, namely the preference for personal security, which accordingly fed a likewise fixed preference for having absolute government rather than having no government whatsoever (Malnes 1988: 67-8).

To put it differently, the liberal egalitarian should not have a very hard choice here at all. Firstly, if 1 is rejected, then a crucial premise for leading a good life is (or is at least in unacceptable danger of being) eradicated. Moreover, that eradication happens in favour of an idea (actual-consent) that is not even a very pronounced liberal one: *It simply is not especially liberal to recognise the commitment to individual political liberty in its ultimate justification-conferring form* (which of course is necessary to ground the idea of actual-consent). (I will return to this latter point in Section 4.4 below.) Or to put it more mildly: At least, it is not clear why liberal egalitarian morality should accommodate that radical interpretation of the topical commitment (cf. 2.5 above).

The weight of each side should now be clearer. And the urgency of VJ's rejection should be apparent when we have now crystallized the configuration of the scales: If the partisans of actual-consent are to retain that idea, as well as their alleged liberal outlook, then they will have to buy the former at a very high price. When endorsing VJ one must concede that the important liberal commitment to fixed standards of good government is outweighed by the idea of actual-consent *per se*. But this is too high a price to pay. The partisans of actual-consent cannot keep trading on the uncontroversial liberal credentials of consent and popular sovereignty. Even though it might have appeared (on the face of it) as if these commitments vindicated VJ, they are no longer doing that job. This is so because both commitments can be accommodated within RJ.

What's more: Recall from Chapter 2 that denying the principle of individual political liberty in the meta-state context does not rule out that it can be properly honoured at the intra-state level. This re-emphasises that it is the idea of actual-consent itself that is at stake. We need not reject the principle of individual political liberty *altogether*, we only deny its most radical interpretation. In other words, when the objects on the scales are clarified like this, the idea of actual-consent will simply have to give in.

So, contrary to what S claims, the vindication of the rationalistic elements in liberal egalitarian morality is *not* due to a concession in the face of a nonideal world. Instead, the endorsement of RJ is as it is because that approach emerges – on balance – as the morally right position to take. This *is* what ideal theory looks like. It is not possible to circumvent the problem of incongruity by invoking the distinction between nonideal and ideal liberal theory. The tension simply resides *within* the latter. S fails.

To sum up, then: Returning to the Tension-Requirement, in this first section I have somewhat fulfilled that requirement's first part. In Chapter 2 it appeared as if the idea of popular sovereignty were in tension with the commitment to fixed standards of good government. It should now be clear that the tension is substantially reduced as long as the former idea is given a rationalistic expression. Let me be the first to acknowledge, though, that the tension is only partially reduced: Something *is* lost when we reject VJ. It cannot be circumvented that the idea of actual-consent *per se* is not accommodated. Fortunately, that sacrifice is bearable. It is also necessary.

Further, by providing a preliminary critique of VJ as part of a proper liberal theory of secession, I have also gone *some* way in fulfilling the second part – B* – of the Tension-Requirement. (I will go all the way soon, but that will have to wait until Chapters 4 and 5.)

What's more: The partial fulfilment of B* entails that this chapter provides a further (presumptive) vindication of RJ, which implies that a Just-Cause theory of secession is strengthened as the proper liberal alternative. This is significant. Under the assumption that *a well-functioning liberal state is (morally) justified in wielding political power*, a right to secede must be demonstrated by way of appealing to *other* facts than the *mere lack of actual consent*. The case for secession must be grounded in facts that raise a valid (and superior) claim to territory on the part of the secessionists; these facts must constitute violations of justice. Secession must have a *just cause*. (Containment of non-consenting individuals is not itself an injustice.) That is the pivotal lesson of this chapter.

3.2 Secession: For and Against

Under the presumption of justified political power, I will now briefly consider the weightiest justice-based arguments in favour (and in disfavour) of secession. I base this section largely on the seminal work of Allen Buchanan (2004; 1997; 1991). Buchanan's Just-Cause approach is still among the most influential theories of secession. It is therefore a natural point of reference. I will, however, only discuss those of his arguments that are relevant in the context of liberal-to-liberal secession¹⁶. Because these arguments are already established in the literature they will be presented here only in very brief fashion. Most space will be devoted to critical comments on my part.

The arguments from 'escaping discriminatory redistribution' and 'cultural preservation' aim at *generating* a valid territorial claim on the part of the secessionists, whereas in the argument from 'rectifying past injustices' the secessionists are instead *reclaiming* their territorial sovereignty. Alongside each of these pro-arguments I will consider the weightiest contra-arguments. Also here I draw on Buchanan's work. These

¹⁶ The most obvious justice-based argument for a unilateral right to secede, namely state violations of human rights, is thus not treated here. It should be beyond all doubt, however, that any liberal Just-Cause theory of secession will recognize the right of a group to secede if, as Buchanan puts it, "[t]he physical survival of its members is threatened by actions of the state [...] or if it suffers violations of other basic human rights" (1997: 37). In addition, Buchanan has recently suggested that "serious and persisting violations of intrastate autonomy agreements by the state, as determined by a suitable international monitoring inquiry" can establish a secessionist right (2004: 357). This may also be a plausible candidate. However, the situations that ground these arguments can be reasonably assumed to fall outside the scope of liberal-to-liberal secession. I will therefore not attend to them here.

are the arguments from ‘preventing wrongful taking’ and ‘achieving distributive justice’. The former flows directly from the presumption of justified political power on the part of the liberal state, whereas the latter can be viewed as a specification of some important elements on which that justification turns.

3.2.1 Escaping Discriminatory Redistribution

According to Buchanan, one of the strongest arguments in favour of secession stems from the secessionists’ interest in escaping discriminatory redistribution (1991: 38-45). The state engages in discriminatory redistribution if it has been

implementing taxation schemes or regulatory policies or economic programs that *systematically work to the disadvantage of some groups, while benefiting others, in morally arbitrary ways*. A clear example of discriminatory redistribution would be the government imposing higher taxes on one group while spending less on it, or placing special economic restrictions on one region, without any sound moral justification for this unequal treatment (ibid.: 40).

Under such circumstances, Buchanan claims, the disadvantaged groups may justly engage in oppositional behaviour. But how plausible is this?

Consider the following scenario: Some of state A’s richest citizens, the Better-Offs, inhabit a specific portion of A’s territory. For several decades, A’s welfare state policies – which include, inter alia, progressive taxation – have involved a substantial redistribution of resources from the Better-Offs to A’s poorer inhabitants of other regions, for the sake of equalising differences in natural as well as material endowments. Now, are the Better-Offs entitled to form a secessionist state on the topical territory, by virtue of the argument from escaping discriminatory redistribution? To this liberal egalitarians would say no. And their rationale would be the contra-secession argument from *distributive justice*.

The condition of arbitrariness seemingly remains unsatisfied in the case of secession by the Better-Offs. In a welfare state it is indeed legitimate to systematically impose higher taxes on the wealthy. And as long as the extreme libertarian position is dismissed, then there is nothing theoretically inconsistent in imposing redistributive policies on the citizenry. The secessionists can, however, reply in two ways: Either they can claim that (1) the redistribution *exceeds* the demands of distributive justice, or they can

(2) question whether the seceding territory and its resources are subject to *common ownership* in the first place (Buchanan 1991: 16-7).

Let me start by addressing (1). As Allen Buchanan has correctly pointed out, there is (i) widespread theoretical disagreement between theories of distributive justice as to *how much* redistribution is required (ibid.: 121). This is certainly the case also within the liberal egalitarian camp. Substantial disagreement exists concerning both the proper *level* of redistribution, as well as *what* to equalize (cf. e.g. Stark 2002). Furthermore, suggests Buchanan, even if we assume that such disagreements can be settled, (ii) the principles of redistribution will probably have to be formulated in such an abstract fashion “that it is difficult to determine their implications in concrete cases” (1991: 121).

This essay would be led too far astray if it were to engage in a thorough treatment of various liberal egalitarian positions. I will therefore not provide any conclusory account of what a proper redistributive level and kind consist in. I believe, however, that various sound theories can be submitted. It should nonetheless be clear that liberal egalitarianism – regardless of version – *is* committed to redistributive practices. Redistribution is crucial to secure competency-rights, which are required to properly honour the liberal commitment to positive liberty (cf. Chapter 2).

Further, concerning (ii), it does not seem impossible to come up with a method for determining application issues. Thomas Nagel, for one, asserts that it is possible to conduct a pairwise comparison between persons affected by a policy. The method consists in using what he calls ‘the impartial view’, which “comes from our capacity to take up a point of view which abstracts from who we are, but which appreciates fully and takes to heart the value of every person’s life and welfare” (1991: 64-5). It is Nagel’s belief that, “when this is done, on careful reflection, a ranking of urgency naturally emerges” (ibid.: 67-8).

Nagel’s suggestion strikes me as rather uncontroversial. I will thus simply assume, without further argument, that (i) and (ii) do not pose an ultimate threat to the strength of the distributive justice argument. In most cases, the redistributive practices will (by a large margin) be in accordance with the demands of liberal egalitarian morality. Let me emphasize, though, that a separate calculation will have to be done in each particular case.

To make it perfectly clear: I have *not* dismissed discriminatory redistribution as a relevant argument in favour of secession in instances where it *is in fact satisfied*. What I

have done, however, is to underline that (within liberal egalitarian morality) the demands of distributive justice are so high that factual redistribution (in most cases, if not all) *will not approximate* an unjust transfer of revenues.

So, if I were correct in my dismissal of the plausibility of the first strategy, then the secessionists would have to resort to strategy (2): To sustain the force of the argument from discriminatory redistribution, they would have to ground it in an eventual *unjust annexation* by the state¹⁷. Note, however, that this reduces the argument from discriminatory redistribution to a special instance of the argument from rectifying past injustices, which I will address in the next section.

Before leaving the outline of the argument from distributive justice the following should be noted: If the secessionists agree to sustain their transfer of revenue to the mother-state, then the argument from distributive justice no longer precludes the case for secession to the same extent (Buchanan 1991: 115, 123).

3.2.2 Rectifying Past Injustices

If a portion of the territory of the current liberal state was initially stolen from the secessionist group, then the latter seemingly possesses a valid claim to that territory. The idea is simple: Past injustices should be rectified. This argument carries an intuitive moral appeal. As Allen Buchanan puts it, in such cases “secession is simply the reappropriation, by the legitimate owner, of stolen property” (1991: 67).

There is a problem, however. On the above interpretation, the impalpable implication that no existing states would qualify as justified wielders of political power seems inevitable. It is a sad historical fact that (more or less) all existing states, including modern liberal democracies, have been established through forceful annexations or other sorts of unjust conquering in the past (either by themselves or some sort of predecessors).

¹⁷ The following point is somewhat related to that strategy: What if taxation has occurred (for some while) *without* a subsequent redistribution of revenue? On Buchanan’s view, this scenario would render the transfers unjust, and thus ground a case for secession founded on the argument from escaping discriminatory redistribution (1991: 157). Consequently, or so it may seem, the argument from distributive justice is weakened. But how much leverage does this resort add to the picture? I find it reasonable to demand that the secessionists’ claim should be subject to a *moral statute of limitations*. (I will elaborate on this sort of requirement soon, in relation to the argument from rectificatory justice (cf. 3.2.2 immediately below).) And, because I only consider well-established liberal welfare states (which usually have been around for quite a while) it will become clear that the argument from discriminatory redistribution does not gather any substantial momentum no matter how discriminatory the state’s redistribution may have been *at the outset*.

This notwithstanding, our intuitions seem to suggest that it is somewhat unreasonable to thereby render them as unconditionally unjustified.

What is doing the moral work here is the idea of a *moral statute of limitations*: If the unjust taking occurred long ago, then the moral force of the rectificatory-justice argument is proportionally reduced. Note that it is not the passing of time itself that does the weakening, but rather the value of ensuring international stability. Following Buchanan, “[t]o fail to acknowledge a moral statute of limitations would produce unacceptable disruption of the international order, with endless recriminations about ancient wrongs vying for priority” (ibid.: 88). A problem with this approach is the difficulty that pertains to determining a reasonable point of impact. Buchanan does not himself venture on such an attempt, although he suggests that it “would certainly have to be more than one lifetime” (ibid.: 89). Indeed, it is wise, I think, to not be more explicit when speaking in general terms. A reasonable limit should instead be decided on a case-to-case basis.

So, what can we conclude from this? Given that a relevant moral statute of limitations is determined, and that the secessionists’ claim falls short of satisfying that threshold, then, the (adequately functioning) liberal state has a valid claim to its whole territory. To see this, one can consider the argument from *preventing wrongful taking*. This contra-secession argument spells out the following simple fact: In the topical situation, secession would constitute a wrongful taking of a portion of the territory that is currently claimed (in valid fashion) by the state (Buchanan 1991: 104-14).

3.2.3 The Preservation of Culture

In *Secession* Allen Buchanan includes the preservation of culture as one of the arguments that can go into an all-things-considered case in favour of secession. Even though, as he claims, the argument is rather weak on its own, he nevertheless suggests that it may add leverage to the conclusory case for a right to secede (1991: 52-64, 151-5). I will now identify a deficiency in Buchanan’s account of this pro-secession argument, which invalidates it for our purposes.

Buchanan identifies a set of conditions that must “be satisfied if the argument from cultural preservation is to succeed in justifying secession as a matter of right”:

(1) The culture in question must in fact be imperiled. (2) Less disruptive ways of preserving the culture (e.g., special minority group rights within the existing state) must be unavailable or inadequate. (3) The culture in question must meet minimal standards of justice (unlike Nazi culture or the culture of the Khmer Rouge). (4) The seceding cultural group must not be seeking independence in order to establish an illiberal state, that is, one which fails to uphold basic individual civil and political rights, *and* from which free exit is denied. (5) Neither the state nor any third party can have a valid claim to the seceding territory (1991: 61).

It is interesting to note how restrictive condition (5) really is. In light of what we have already discussed above, unless the secessionists can advance a claim of *unjust annexation* of territory on the part of the state (and, given that their territorial claim is not overridden by a moral statute of limitations), the liberal democratic state *will have* a valid claim to territory: Under the rationalistic model, adequately functioning liberal states are justified wielders of political power.

It thus becomes clear that the argument from cultural preservation *cannot work at all* as an argument for secession from a well-functioning liberal state. As it is not able to generate a valid territorial claim *on its own*, it is indeed redundant. And Buchanan himself concedes explicitly that the argument is only capable of justifying secession in cases where no clear title to the territory exists (1991: 61, 153-4).

Interestingly, Buchanan's own account of political power – on which he indirectly relies in *Secession* (1991), and (as seen above) states more explicitly in *Justice, Legitimacy, and Self-Determination* (2004) – is of the rationalistic type. And when the issue at hand is liberal-to-liberal secession, Buchanan must (for the sake of theoretical consistency) either abandon (5) and then consequently seek to demonstrate how a territorial claim *can be generated* by the cultural preservation argument, or he must disqualify the preservation of culture as an argument for secession. Put differently, in the case of secession from an *adequately functioning* liberal state, the argument from cultural preservation is powerless in justifying secession, unless condition (5) is *already* fulfilled by the argument from rectifying past injustices. But in such a case the former argument is not doing any relevant work at all, and should therefore be dismissed from the argumentative strategy.

3.3 Concluding Remarks: A Just-Cause Theory of Secession

This chapter has defended a theory of secession grounded in injustices. The Just-Cause approach has been presented as the natural way for liberal egalitarians to accommodate a right to secede. This right is, however, a very limited one. Secession from a liberal state can be justified if (1) the secessionists have suffered the wrongful taking of territory, *and* a moral statute of limitations is satisfied. Further, a secessionist right can be granted if (2) the state's redistribution of resources exceeds the demands of distributive justice. In practice, however, this latter justification will (almost) never apply in the case of secession from well-established liberal welfare states.

We have further seen that (3) a right to secede cannot be justified by sole reference to the need to preserve a culture. The following should be emphasized, however: Even though liberals must deny cultural preservation as a valid argument for *secession*, it need not fail to justify *intra-state* autonomy arrangements. As Buchanan rightly points out, liberal morality has a presumption in favour of nonsecessionist solutions for preserving minority cultures. The rationale is that this would ensure that the liberal state “retains ultimate control over entry to and exit from illiberal enclave communities within its borders, [which implies that] individuals will have some freedom of choice to participate in these communities or not” (1991: 59). I will return to the issue of intra-state autonomy in the next chapter.

The next chapter will also consider the most persuasive liberal alternative to the Just-Cause approach. Let me stress again that the presumption of justified political power (which has grounded the theory of secession outlined in this chapter) is still exactly that – a presumption. In the rest of this essay I will therefore be at pains to fulfil the second part of the Tension-Requirement. I will argue that the alternative candidate for a liberal theory of secession, namely the Choice approach (which is grounded in the principle of individual political liberty), is less compatible with liberal egalitarianism. This will further establish the Just-Cause alternative as the proper liberal approach to secession.

The Presumption of Political Liberty

If I have thus far been on target, then it should be clear that the heading of this chapter is now rather misleading. That which appeared (in Section 2.4.1) as a promising approach to establish a permissive liberal theory of secession – grounded in a *pure* voluntaristic model of political power – is now cast in dimmer light. The presumption of political liberty seems to falter.

I will now, however, address an attempt to resist that latter conclusion. Firstly, I will briefly outline the main thesis of a novel Choice-approach, which seems able to fulfil the first part of the Tension-Requirement. If so, this appears to move us towards a more level playing field for the two liberal approaches to secession. However, to outperform the Just-Cause approach, the Choice-theory must also demonstrate that it does a *better* job in honouring liberal commitments. The main part of this chapter will discuss its arguments to that effect.

4.1 Christopher Wellman's Permissive Theory of Secession

Christopher Heath Wellman (2005; 1995) has recently developed a sophisticated argument to show why liberals should be inclined to take a quite permissive stance towards recognizing a right to secession. His theory is as plain as it is intuitively compelling.

On Wellman's view, all "groups [that are] able and willing to perform the requisite political functions" have a right to secede (2005: 64). The only additional requirement is that the remaining state must also be able to function adequately. This theory follows, so he claims, from valuing self-determination, while at the same time recognizing that the justification of political power must be made conditional upon functional requirements.

To his credit, Wellman is sensitive to the deficiencies associated with relying on a pure voluntaristic model of justification. His *hybrid* account explicitly restricts the latitude of the secessionists: Secession cannot be justified if it jeopardizes fixed standards of good government. This is interesting. By incorporating such a rationalistic element in his model

of justification Wellman goes a long way in fulfilling the first part of the Tension-Requirement. Consequently, the presumption in favour of the rationalistic model of justification, which thus far has vindicated Just-Cause theory as the proper liberal approach to secession, is now being challenged.

Having said that, it will take more for Wellman's theory to establish itself as the *best* liberal approach to secession. To achieve this, he must also fulfil the second part of the Tension-Requirement. This implies showing that liberal egalitarians *should* choose his hybrid model of justification, rather than the pure rationalistic approach to political power. Wellman offers two rationales for why his hybrid account is to be preferred. In what follows I will discuss their leverage and how the partisans of Just Cause-theory may reply.

4.2 Wellman's Criticism of a Pure Rationalistic Model

There might be a significant problem with the rationalistic account of political power. If one uses a purely functional measure of justification, then there is seemingly nothing to prevent this account from theoretically allowing for *forceful annexation* of other states. Wellman claims that this impalpable implication is inevitable, and therefore rejects the pure functional (or what he calls 'teleological') model. His argument proceeds in two steps. Writes Wellman:

[T]he teleological approach allows secessionist parties to claim a right to secede grounded in efficiency. [...] Suppose, for instance, that Alaska might be able to provide more efficiently for itself than the United States as a whole currently does, and that the United States without Alaska would be a more efficient political unit because of its more manageable size and increased contiguity (1995: 157-8).

If that were the case, holds Wellman, a right to secede is consistent with, and would indeed be required by, the pure functional model of political power. This insight leads him to develop his criticism:

[I]f the teleological justification for the state entails that secession is justified when the new political arrangement will be more efficient, then it also justifies forcible annexations under analogous circumstances. For instance, if Alaska's claim to its territory outweighs the United States' claim in those cases in which the former could better perform the state's functions, then it follows that the United States

could forcibly annex Canada if the new union could better perform its governmental function in Canada than Canada currently does. But this just seems wrong. [...] If Canadians prefer to remain independent of the United States then the latter would not be justified in forcibly annexing the former despite any possible increases in efficiency (ibid.: 159-60).

To avoid this implication, Wellman endorses a *hybrid* model, in which the justified wielding of political power is made dependent upon not only (i) *functional requirements*, but (ii) *actual consent* as well. Obviously, by including (ii) it becomes easy to circumvent the theoretical sanctioning of a forceful annexation of Canada: As long as the justification of the prospective new state is made conditional on the consent of the Canadians, then a forceful annexation cannot be theoretically sustained as long as they oppose unification. The post-annexation state would simply lack the consensus required for the justified wielding of political power. Thus, the introduction of a consensual element is Wellman's way of responding to the putative deficiency of a purely functional model.

How can the rationalistic approach meet Wellman's criticism? One intuitively sound strategy would be to dispute whether the topical consequences would in fact come about. There seems to be obvious moral prohibitions against forcefully acquiring other states. The point is that liberals value peace and stability. For instance, when facing illiberal regimes it would not be the proper liberal response to simply sanction forceful acquisition. As Brian Barry puts it,

[a]t any rate, liberals are not so simple-minded as to imagine that the answer to all violations of liberal rights is to send in the Marines, or even a United Nations force. As in any just war theory, there must be some doctrine of 'proportionality' (2001: 138).

It seems rather straightforward to assume that liberals would back that description. And as long as the valuing of peace and stability can be grounded in liberal principles this is a sound strategy. Let us call it *the strategy of elaboration* (of a normative position)¹⁸.

But does this point manage, by itself, to save the pure rationalistic model of political power? It may not do so. Even though the virtuous adherence to peace and stability may be incorporated in liberal theory – which implies that liberal morality, all-

¹⁸ I will not discuss the plausibility of Barry's elaboration of liberal morality. The only point to note here is that the strategy of elaboration would be *ad hoc* if it could not be grounded in the relevant normative principles of the defended position.

things-considered, will not sanction forceful annexation – one may object that it does nothing to alter the unfortunate theoretical implications of the topical *model* of political power itself. The United States would still be justified in annexing Alaska, and the latter could likewise be justified in seceding from the former. In both cases the justification would be based on a prospective increase in efficiency.

There is, however, a significant flaw in this objection to the strategy of elaboration. For the objection to work one must assume that Wellman's own assessment of the pure functional model does not make any reference to *the substantial content* of (liberal) morality. It can be shown, I think, that this is not the case with Wellman.

His rationale for rejecting the model is its *unfortunate consequences*. What does this imply? Firstly, it means that forceful annexation violates the principle of political liberty. Secondly, this is unfortunate because freedom of political association is valuable to (each of) the citizens of the annexed state. Note that without these implicit assumptions (about value) Wellman's assessment of the model would not have a basis¹⁹. Put differently: The palpability of a pure functional model of political power cannot be assessed in isolation from a more substantial account of *what it is that possesses moral value*. This is a fundamental requirement of political philosophy. If one does not clarify value attributions, then moral deliberation cannot even get off the ground.

To see clearer why this deficiency in Wellman's criticism is significant, consider the following analogy: To assess the plausibility of, for instance, a rights-based approach in normative argumentation, it would not suffice for invalidating it to claim that (A) its implementation would have unfortunate consequences for human well-being. Instead one would have to (B) criticise the approach in a more formal and fundamental way, for instance by arguing that the very existence of rights – as a concept – is implausible. The point is that the former strategy would have to be based on an implicit assumption about the *content* of the topical rights. And, to be able to say something about the eventual negative consequences of implementing that (particular and specified) rights-regime, it is necessary to make assumptions about value, which is impossible without invoking the framework of a substantial morality. It is not enough to spell out the consequences. One must also show *why* they are negative.

¹⁹ Note that it is not important whether I am precisely on target in describing Wellman's own assumptions here. The crucial point is rather that his assessment must rely on assumptions about value.

Let me elaborate with an example: Imagine that a rights-regime specifies an equal right to live in something that resembles a Hobbesian “state of nature”, in which each person has the liberty to pursue one’s own interests as seen fit²⁰. The sole function of the government (if at all necessary) would be to ensure that its “citizens” are equally endowed with that (tragic) liberty. That regime would obviously be impalpable from a liberal perspective, because it opens up for nothing else than a survival-of-the-fittest right. Lockean property rights are not in place. Redistributive schemes for compensating variations in natural endowments are likewise missing, to name only a few deficiencies. Thus, a more extensive rights regime would obviously have to be implemented to satisfy the political philosophy of liberal egalitarianism. This speaks for itself. The subtler lesson, however, is that to be able to make that assessment in the first place, it was necessary to consult the substantial content of liberal morality.

And what conclusions would the liberal draw from this particular rendition of a rights-based theory? Clearly it would be deemed as deficient. But would *its* deficiency also go some way in disqualifying the plausibility of rights-based approaches *in general*? Of course it would not. In fact, if that were the case, then liberal theory – which is commonly cast as a rights-based approach – would be invalidated by way of a rather poor, or even outrightly misplaced, argument. Similarly, Wellman cannot claim that a pure functional approach to political power is *generally* invalidated by the negative consequences that are assumed to follow from (what turns out to be nothing more than) a *particular* version of it.

As goes for strategy B, its critique would be strictly formal, and thus not subject to this line of criticism. Not so for Wellman. To make it clear: His critique is indisputably relying on implicit assumptions about value, which means that he invokes elements of a substantial normative position. He thereby exemplifies strategy A. And as he does not build a case for why it makes sense to shut out other moral considerations that belong to the same topical position (which for Wellman is liberalism), his argument cannot reply to the objection I have just developed.

So, it appears that the strategy of elaboration may not be so unconvincing after all. When substantial notions of liberal morality are made part of the assessment in the first

²⁰ Consider, for instance, Hobbes’s (in)famous phrasings in *Leviathan*, where he describes “the Liberty each man hath, to use his own power, as he will himselfe, for the Preservation of his own Nature” as “a Right to every thing, even to one anothers body” (1975 [1651]: 66-7, quoted in Malnes 1988: 65). The subtlety and nuances of Hobbes argument when read in whole is not relevant here. I only borrow his description of a person’s natural freedom in a state of nature to illustrate what the content of an extremely narrow rights-regime could be.

place, then, why not also bring in liberalism's preference for peace and international stability? One may, however, object that the inclusion of such considerations can only fit into a (too) *broad and diluted* liberal morality. A liberal theory of secession should ground its arguments in principles that are more *genuinely liberal*. I concede that this objection has some merit. I will therefore consider a similar rationale for dismantling Wellman's criticism. But it will now be clearly grounded in central liberal principles. Keep in mind that the vital question is now whether or not a *liberal egalitarian* version of a pure functional model of justification can avoid the sanctioning of forceful annexations.

The most intuitive response would probably be that this question could quite easily be answered in the affirmative: If one simply demands that *a central requirement for the justified wielding of political power is to abstain from annexing other justified states*, then the model seems to be saved. Call this suggestion S. The vital contribution on the part of S is the specification of the functional requirements for justification. That set of requirements now includes respecting the self-determination of other states, (at least) as long as those states themselves fulfil the same set of functional requirements. Thus, the model of political power would still be defined in purely functional terms, yet it would not contain the seedbed for justifying forceful annexations. Even better, the rationale for this would be developed from the nucleus of liberal morality: Indeed, the source would be the very same central liberal principle on which Wellman builds his whole theory, namely, the principle of political liberty.

Recall from Chapter 2 that liberal morality is fundamentally concerned with protecting the interests of individuals; it adheres to ethical individualism. In addition, due to its universalism, liberal morality does not differentiate between the citizens of different states. Their interests are equally valuable. Therefore it seems obvious that the interests of the individuals in state A (i.e. to remain politically independent) must be weighed against the interests of those in state B (which might be, say, to acquire new territory that helps them develop long-desired luxurious leisure activities). And if the competing interests are as suggested, then it seems reasonable to assume that the relative importance of the former will clearly outweigh that of the latter. Note that this expands the question of justified political power from applying only to the *intra*-state context (i.e. concerning the proper moral relationship between the state and its citizens), into also applying in the *inter*-state context.

Thus, to put it straightforward, a liberal state is not justified (on the functional model) unless it respects the current political liberty of (the citizens of) other states. This liberty is dependent upon those states themselves satisfying the topical set of functional requirements. When so doing, they are recognized as justified wielders of political power, and thus have nothing to fear in terms of being forcefully annexed by (other) liberal states.

Put differently, it seems unnecessary to turn one's model of justified political power into a (partially) voluntaristic one for the sake of circumventing the topical forceful annexations. By introducing a threshold for functional justification, which is meaningful and non-ad hoc (from the perspective of liberal morality), the rationalistic approach can meet this criticism. Consequently, Choice-theorists must look elsewhere for a proper vindication of their own position.

As long as the obligation to abstain from annexation is contingent upon the other state performing a fixed set of functions properly, it is mandatory to equip the model of political power with a concrete measure for minimal justification. To be more specific, the state would have to endow its citizens with a set of liberal rights that were equal to, or more comprehensive than, a certain minimal set. It is not my aim here to fully specify the content of that set, but I assume that such a *threshold* can be identified. It is my view that the exact specification of a meaningful threshold should be done on a case-to-case basis. But, once a relevant limit is specified and met, then the theoretical sanctioning of the topical forceful annexations would be circumvented. Central principles of liberal morality would quite simply ban it.

Indeed, Wellman entertains (something like) that idea himself. He nevertheless rejects it for the following reason:

If the sole feature grounding a state's claim to its territory is that the state's presence in this region serves a vital function, it seems *ad hoc* to assert that the state maintains this claim as long as it performs this function *merely adequately*. [...] [I]t seems natural that any competitor better able to perform the very same function would thereby extinguish or outweigh the existing state's claim (1995: 158).

Here, however, it goes wrong for Wellman. As we have just seen above, to be able to meaningfully assess a functional model of justification one must specify the content of *the*

whole set of functions. Therefore, to reiterate, Wellman does not fully acknowledge that a threshold requirement is not theoretically ad hoc *on the liberal egalitarian version* of the pure functional model. What's more: As seen in Chapter 2, it is a crucial liberal idea that an individual should be free to live her life as she sees fit, as long as her choices meet certain standards of competence. When viewed in an abstract way, this strikes me as quite analogous to the account I have just outlined. The idea of thresholds is uncontroversial and indeed necessary within liberal morality.

So, thus far it seems that when one's account of the rationalistic approach is relevantly substantiated, it is capable of theoretically circumventing the impalpable consequences that Wellman ascribes to it. I will now turn to developing a further argument for why it is not theoretically ad hoc to operate with a threshold for minimal (functional) performance. The argument is firmly rooted in liberal egalitarian judgments, but it also has resonance, I believe, with a wider range of reasonable moralities.

4.3 Rewarding Terrorism

Consider the following scenario: A liberal democratic state has been ridden by a violent conflict with a numerically small, yet persistent, secessionist group. The latter party (or, perhaps, rather a fraction of it) has engaged in, and still pursues, terrorist activities, which consequently disrupt public order and leave large parts of the citizenry in fear of being victims of an attack. Obviously, this reduces the state's capability for providing its citizens with a daily life that is free from violent physical threats, let alone the accompanying psychological pains of distress and anxiety. Thus, one of the state's important legitimising functions is challenged.

Now, according to Wellman's interpretation of what is implied by a pure functional model of political power, the secessionists would be justified in seceding given that they could establish a polity in which the performance of the relevant legitimising functions would be enhanced. In other words, they would be allowed to secede and establish a separatist state, in which the terrorist activities would (obviously) come to an end, which implies that efficiency has increased, and thus that their secession would be justified. In addition, the mother state would also enhance its efficiency, in the sense of simply being alleviated from disruptions of public order.

I am convinced, however, that the implications shown in this thought experiment will fly in the face of any sound moral theory. To put it bluntly, one should not be rewarded for pursuing terrorism. I take this to be a persistent and strong judgment. And it constitutes, I believe, another rationale for why it is *theoretically necessary to incorporate a threshold* for sufficient performance into a functional model of political power. It is not ad hoc; on the contrary, it is required (by our considered judgments). Any sound theory of secession must accommodate the belief that terrorism should not turn out to be rewarding²¹.

Of course, one may object that my example instead should be interpreted as (in some way) further demonstrating Wellman's point, namely, that a pure functional model of political power – which is solely based on efficiency measures – is indeed impalpable. That is not the proper interpretation, however, for the following reason: As I have argued above, any assessment of the *liberal egalitarian version* of the pure rationalistic model must take into account the range of normative principles belonging to the topical moral position. When paired up with that assumption, it becomes clear that the example of rewarding terrorism provides *a further reason* for incorporating a threshold for sufficient performance into our model, rather than undermining the model itself.

Moreover, apart from flying in the face of liberal egalitarian judgments, a threshold-free functional model of political power would also obviously run the risk of creating perverse incentives on the part of the secessionists: If you get a bomb, you might get a state.

Let me emphasize that Wellman's hybrid model would perhaps to some extent lower the number of such terrorist-laden conflicts. But does this sole (and rather consequentialist) point suffice to persuade liberals to endorse the Choice approach? I think not. It is a feeble reason for making such a drastic move as the endorsement of a Choice-right to secede actually is. What's more: If we are really concerned with not rewarding terrorism (or the threat of such), then we should instead be firm in our rejection of a Choice-right; that is, if we abandon the rationalistic model of justification for the *sole* reason of avoiding eventual terrorist activities, then isn't this (in a tragic sense) a huge (or even the ultimate) "reward" to the terrorists? At the very least, liberals should

²¹This norm should only be abandoned in exceptional cases, such as when concessions to the terrorists would be necessary to avoid massive deterioration of human well-being. For example, this could apply in the face of terrorists who possess and threaten to use nuclear weapons.

postpone their all-things-considered judgment until we have surveyed Wellman's second rationale for voluntarism, and the possible rationalist reply.

4.4 The Hybrid Model and Individual Political Liberty

If my argument thus far has been sound, then voluntarism cannot be brought into Wellman's model by claiming that the rival rationalist approach unavoidably sanctions forceful annexations. It simply does not. However, a (slightly) different rationale may still show that a liberal model of justification should incorporate voluntaristic elements: It holds that Wellman's hybrid model is somehow called for by *the principle of individual political liberty itself* (or what he calls 'individual autonomy').

Wellman is explicit about his theory being a conditional one: "If you value self-determination, then you should endorse secessionist rights" (2005: 38). On his view, this valuing of group autonomy is what follows from the "modest and plausible" assumption that "other things being equal, people should be left free to be the authors of their own lives" (ibid.: 2). Of course, as liberal egalitarians, it is hard to be opposed to that assumption when it is spelled out in such a general form. As seen earlier, liberal morality acknowledges the value of an individual's free choice. Put simply, this can be traced to the negative conception of liberty, which vindicates the commitment to individual political liberty. This commitment is uncontroversial. However, as I will now argue, Wellman's second rationale runs into problems as it tries to trade too much on that commitment.

As seen in Section 2.2, group rights can be accommodated within liberalism's value-individualist framework as long as those rights are given an individualistic justification. Given this, it is easy to see how group rights can be *instrumentally* valuable. There are, however, some group rights that seem to demand *intrinsic* valuing, such as the right to democratic governance. Writes Wellman,

[i]t is widely held that democracy brings about the best consequences, but most believe that the case for democracy does not depend solely, or even principally, upon its instrumental value. [...] [P]eople have a right to democratic governance even if better results could be achieved via undemocratic means (2005: 53).

Under the premise of justificatory individualism, however, it is not possible to straightforwardly ascribe intrinsic value to collective rights. To be able to posit deontological reasons for valuing democracy, a connection between individual autonomy (which has intrinsic value) and democracy would have to be established.

Such a connection could have been demonstrated if it were possible to assert that an individual is self-governing when she participates in the process of democratic decision-making. But, as Buchanan (1998: 17-8) has persuasively argued, that assertion fails because one is simply not exercising self-rule when so doing; one is rather governed by the majority. In other words, it is not possible to ascribe intrinsic value to democracy (by way of that rationale) because democratic participation cannot be viewed as a straightforward extension of individual autonomy. There is a *gap* between the two.

Yet, says Wellman, we continue to believe that democracy is in fact intrinsically valuable, even though we apparently know of no way to prove this within a value-individualist framework. And this is where his argument becomes compelling. A central strategy for renouncing Choice-theories of secession that are grounded in the principle of individual autonomy has namely been to invoke the very same “gap-problem”. And while Wellman concedes that such a gap exists between “valuing individual autonomy and valuing the group autonomy necessary to justify secessionist rights”, he counters the objection as follows: Because “the very same gap” confronts us as proponents of democracy, then “[a]s a consequence, we cannot consistently cite this problem as a decisive argument against secessionist rights unless we similarly indict the case for democracy” (2005: 53-4). Call this proposition (i).

Here we have arrived at the core of Wellman’s second strategy for justifying a (partially) voluntaristic account of political power. To vindicate a Choice-right to secede one must recognize that group self-determination (or autonomy) is intrinsically valuable. But rather than offering a direct defence for a Choice-right, Wellman indirectly substantiates its plausibility by pointing to the negative theoretical consequences that follow from *not* allowing for intrinsically valuing group autonomy: For the sake of theoretical consistency one would (lamentably) also have to deny that democracy is intrinsically valuable.

Put differently, unless one grants a Choice-right to secede (and accordingly recognizes that the model of justified political power is (partially) voluntaristic), one must

be willing, so it seems, to renounce the intrinsic value of democracy. In addition, as Wellman sees it, one must also deny both that (ii) “there are nonconsequential reasons against forcibly colonizing others”, and that (iii) “legitimate states are entitled to an appropriate degree of sovereignty” (ibid.: 55).

It should be clear from Section 4.2 that (ii) can be accommodated within a purely rationalistic model. Recall that a justified state (under that model) enjoys sovereignty in its relations with other well-functioning states because each state’s justification depends (among other conditions) upon renouncing forceful annexations of other well-functioning states. One need not include an element of actual-consent to get this result. A unilateral Choice-right to secede, on the other hand, is crucially dependent upon a (partially) voluntaristic model of justification. But if forceful annexations can be avoided *without* invoking a voluntaristic model of political power, then, (ii) cannot help to ground a Choice-right to secede. Further, it seems quite achievable to dismantle (iii) by way of similar reasoning. If so, then Wellman is left with (i) in his attempt to justify secessionist rights. But how plausible is proposition (i)?

Wellman establishes the urgency of intrinsically valuing group autonomy by utilizing an uncontroversial example, namely the view that we have deontological reasons to value democracy. Further, he argues that this kind of group autonomy (which enables us to value democracy) is *similar* to that required to ground a right to secede. Thus, so it goes, if we want to defend democracy, then we must acknowledge the value of this strong group autonomy; and, consequently, we must also grant a Choice-right to secede. Indeed, as Wellman sees it, democracy and secession have a mutual normative basis:

On reflection, it should come as no surprise that the arguments on behalf of democracy and secession share the same lacuna because, in the end, plebiscitary rights to secede [i.e. Choice-rights] are merely an extension of democratic governance to the issue of territorial boundaries (Wellman 2005: 54).

The shared ‘lacuna’ is the commitment to individual political liberty.

Interestingly, Wellman has only addressed *how we can be justified in intrinsically valuing (strong) group autonomy*. To elaborate: value-collectivism, he holds,

is admittedly counterintuitive and the burden of argument therefore falls on anyone who would invoke considerations in tension with it, but the implications for democracy, colonization, and the forcible annexation of legitimate states provide the requisite argument. In other words, because the implications of denying the deontological value of group self-determination are less palatable than embracing a premise that may conflict with value-individualism, these implications enable one to shoulder the burden of argument [...] that value-collectivists must bear (2005: 55).

Put differently, we are justified in valuing this strong group autonomy because the case for intrinsically valuing democracy depends upon it.

One may agree with this or not. It nevertheless does not matter. Wellman's argument in favour of a voluntaristic model of political power is deficient simply because it presumes that once the intrinsic value of *group autonomy* is justified (by drawing on the democracy example), a primary right *to secede* is also established. But this is a rushed conclusion. Clearly, such valuing is a necessary condition for justifying a Choice-right, but it does not follow (without further substantiation) that it is also a sufficient condition. In other words, Wellman lacks a rationale for *why* the proper valuing of that autonomy requires recognizing secession.

Even though both democracy (D) and a Choice-right to secede (S) may perhaps be shown to share the same normative 'lacuna', they are nevertheless different concepts. Their (separate) vindication is dependent upon an all-things-considered evaluation of how they can be properly fitted into liberal morality. Thus, if liberal egalitarianism is capable of providing a weighty rationale for why individual political liberty should not ground S, then it is possible to reject S. But the prospective rejection of S need not imply that we must also reject D. My suggestion is rather that it is possible to value the strong group autonomy necessary to ground both concepts, but nevertheless argue that *other* moral reasons may *outweigh* our *prima facie* vindication (grounded in our valuing of group autonomy) of D, S, or both.

S is, however, the most plausible candidate for being outweighed in that fashion. To elaborate: There are *several ways* in which the (abstract) idea of group autonomy can be properly honoured short of allowing for a redrawing of territorial boundaries. That is, even if we agree to initially acknowledge the intrinsic value of (strong) autonomy for group G, it remains an open question whether this initial *prima facie* valuing should lead us to recognize a right for G to secede, rather than to enjoy *some other form of enhanced self-rule*,

such as intra-state autonomy arrangements. Group autonomy *is* valuable, but its proper form must be determined after exploring the impact of the various feasible solutions on other important liberal commitments.

In contrast, it seems unlikely that one or more cogent (and relevant) rationales can be developed (from liberal morality) for why we should prefer *other forms of government* to democracy.

So, it appears that we need not address the validity of Wellman's *justification for valuing group autonomy* at all. His argument fails because he does not substantiate his assumption of *what* that autonomy *amounts to*. To sustain the force of his argument, he must show why intra-state autonomy arrangements cannot sufficiently honour group self-determination. But, as we shall now see, liberal egalitarian morality (to Wellman's misfortune) seems ripe with rationales for why intra-state solutions should be the preferred way to accommodate secessionist demands for self-rule.

The liberal commitment to freedom of association does not in itself sanction the most extreme form of political liberty, which is secession. As Allen Buchanan puts it:

It is one thing to say that persons within a polity have the right to associate together for political or religious purposes; it is another to say that this same right includes the right to take territory that is claimed by others. [...] To say that the right to freedom of association includes the right to alter jurisdictional boundaries (meta-jurisdictional authority) by taking territory, is to trade on the uncontroversial liberal credentials of this right, but only by stretching its meaning unconscionably. When liberals say that the right to freedom of association is unquestionably among the rights any political order ought to respect, they have in mind the freedom of persons to associate with each other within a jurisdiction, not the right to take territory to form a new jurisdiction unilaterally (2003: 255).

I think Buchanan is right on target. Clearly, this places the burden of proof on the Choice-theorist to explain why individual political liberty should nonetheless be interpreted as grounding a secessionist right.

Now, as I alluded to in Chapter 2: If the commitment to individual political liberty is spelled out in its ultimate – justification-conferring – form (which renders political power voluntaristic), then it *may* ground a Choice-right to secede. However, I also suggested (in Sections 3.1.2-4) that this radical interpretation of individual political liberty is outweighed out of consideration for other liberal egalitarian commitments. The

rationale for this was the need to avoid the eradication of the commitment to fixed standards of good government. Thus, on balance, liberal morality *should* endorse a more modest interpretation. Put differently, if self-determination for groups is intrinsically valuable, then it should be accommodated by way of granting intra-state autonomy.

It is interesting to note that Wellman is capable of replying to this first objection. As seen in 4.1 above, his Choice-theory *does* offer a rationale for how the topical liberal commitments can be *balanced*: By requiring that both post-secession polities are able to function properly, the commitment to fixed standards of good government is saved. I think that reply is somewhat sustainable. This is important. The partisans of Just-Cause theory must thus concede that a crucial premise in their earlier rejection of the pure voluntaristic approach to political power (which yielded the vindication of the Just-Cause approach) is significantly challenged. Consequently, one is forced to look elsewhere for a convincing rationale for why individual political liberty should nevertheless be interpreted in a modest form.

Fortunately, there are some good candidates to that effect. And both are developed from the midst of liberal morality. In the next section I discuss the argument from *securing the legitimate interests of the nonsecessionists (who live on the secessionist territory)*. The second rationale will be presented in Chapter 5.

4.5 Securing the Legitimate Interests of the Nonsecessionists

If the principle of political liberty is to function as the normative basis for a Choice-right to secede, then one must assume that the secessionists themselves can be identified as the proper constituency for a vote on secession. Even though this matter may initially seem straightforward, on closer examination the picture gets blurrier.

When applied to non-ideal cases, Wellman concedes that his theory must accept some deviation from the idea of (unanimous) actual consent. No matter how one draws new territorial lines there will inevitably be a minority of nonsecessionists among the larger secessionist group. Thus, when faced with the dim prospects for a consensual vote, Wellman favours a simple majority in two referenda as the second-best option. The first plebiscite initiates the process of separation. The second determines whether the secession is still preferred after its terms have been negotiated (2005: 60-3).

Interestingly, at this point Wellman seemingly runs into a problem of theoretical inconsistency. To him, a central argument for endorsing a partially voluntaristic account of justification is the value of *consensual* participation in political institutions. (This requirement of unanimity enabled him, e.g., to avoid forceful annexations, cf. 4.2.) Note that the principle of freedom of association is thereby used in the sense that *unanimous* actual consent is required for justification on the part of the mother-state. When we call attention to the prospective secessionist state, however, the unanimity-requirement (which makes a primary right to secede possible in the first place) is altered. In the latter context, justification can be established by the consent of a *majority*. (For Wellman it is not even compulsory with a ‘qualified’ (two-thirds) majority; a ‘simple’ (51 per cent) majority is regarded as sufficient.) The principle of political liberty is thus interpreted in a more modest way.

But this is problematic. As long as majoritarianism is sufficient to establish territorial sovereignty on the part of the secessionists (given that a vote is cast among the inhabitants of the secessionist territory), then, Wellman needs to provide a convincing rationale for why unanimous actual consent (which is a tremendously stronger requirement) is needed to defend the mother-state’s claim to territory in the first place. In other words, why should not the mother-state also enjoy the more lenient requirement of majoritarianism? Allen Buchanan hits the nail on the head, I believe, when he puts the point as follows:

Either the requirement of consent is taken at face value and applied consistently to the secessionist plebiscite itself, in which case the view is of no practical consequence because secession will virtually always be blocked by dissenting votes, or the requirement of unanimous consent is relaxed for the population of the subregion though not for the population of the state as a whole, but without any explanation of why this is so. [...] [I]f lack of consent is acceptable [in the subregion], why not also in the original state? (2003: 254).

In fairness to Wellman we must add that he includes a notion (which he adopts from Harry Beran) of a *reiterated* use of the majority principle. The idea behind this is that

there may be people within [the separatist state] who do not wish to be part of the newly independent state. They could show, by majority vote within their territory, that this is so, and then become

independent in turn, or remain within the state from which the others wish to secede. This use of the majority principle may be continued until it is applied to a single community (i.e. a community which is not composed of a number of communities) to determine its political status (Beran 1998: 38-9, quoted in Wellman 2005: 60).

In other words, new referenda should be held to endow all groups with the same (permissive) right to political self-determination. Note that an implicit idea here seems to be that group A is justified in coercing group B into a non-consensual secession from group C as long as *B is also granted the right* to freely associate with A or not to do so, in a succeeding vote. But is this sufficient to remedy Wellman's apparently implausible intermingling of one partially voluntaristic and one in-practicality-less-than-partially-voluntaristic model of justification?

On my reading, implicit in Wellman's theory is the following suggestion: As long as a state contains secessionist groups that are willing, and equally important, *able* to mend for themselves through sovereign statehood, then secession becomes morally justified. Perhaps this *containment-of-groups-with-ability*-condition could function as a sufficient rationale for justifying differential treatment between contexts? Call this rationale (R).

On the face of it, R clearly has the potential for reasonably explaining why unanimous consent is required when assessing the justification of the mother-state: If a polity contains able and willing parties, then those groups should not have their political liberty infringed upon by a majority vote against secession. On the contrary, secession should be carried out, and, crucially, the decision to secede can be taken on the basis of a majority vote within the secessionist territory. Still adhering to R, however, the justification of the new separatist state would in turn be subject to the same requirement of unanimous consent. Thus, if the separatist state itself contains a group that is willing and able to secede, then the process starts all over again: The separatist state, which is now the new mother-state, gets its justification thwarted when confronted with a majority vote for secession in the territory of the new secessionist group. The process stops when a new independent state no longer faces secessionist groups that are *able* to govern in legitimate fashion. In light of this, R seems to render (more) consistent the alternation between requiring full consensus or only (simple) majorities to obtain justification.

R is not without its problems. Allen Buchanan (1997) has issued an especially powerful critique. He focuses on the implausibility of R (and the whole theory of secession that accompanies it) when it faces the task of *institutionalising* the right to secede into international law. Buchanan's point is that recognition of a Choice-right to unilateral secession (such as found in the argument of Wellman) would create a state of affairs in which governments would get (perverse) incentives to oppose various forms of intra-state autonomy arrangements, simply because such arrangements would obviously render prospective secessionists more capable of providing the legitimising functions of a state.

I find Buchanan's critique both strong and to the point, and indeed capable of significantly weakening Wellman's theory, and other similar versions of Choice-theory, and perhaps inflict mortal wounds upon them²². I will nevertheless leave it aside here, as it is not for this essay to provide an exhaustive assessment of R. I will now briefly consider another of its problematic sides.

On my reading, R implicitly assumes that the reiterated use of the majority principle *helps remedy* the harm done to the political liberty of the nonsecessionists, who after all are coerced into secession through a majority vote. To reiterate, the secession is morally more palpable as long as the coerced minority (in turn) *gets its own say*. This misses an important point, however. For one's say to be meaningful in the topical context one must have a *real* choice. That is, one must vote over viable alternatives. Call this premise (a). In addition, R also seems to assume that (b) the nonsecessionists have a preference for *a state of their own*.

Consider premise (b). Obviously, it is difficult to accommodate the preferences of the nonsecessionists if (1) they prefer to remain affiliated with the mother state, and (2) the territory they inhabit are not located in close (or perfect) vicinity of the territory of the post-secession mother state. Condition (2) might also come in a more complicated version, namely, if (2*) the territory they inhabit is made up of separate pieces of land that are dispersed across the secessionist territory, and these areas are not located in close (or perfect) vicinity of the territory of the post-secession mother state.

Let us now assume that the following (rather straightforward) proposition, (P), is true: All else being equal, a polity will be able to function better if its territory is *not dispersed* in separate pieces of land. A possible exception to this is the case of separate

²² But see also Wellman's response to Buchanan's critique (in Wellman 2005: Chapter 7).

pieces of land that are either located within territorial waters or divided by international waters. The point is that intra-state affairs are allowed to pass smoothly²³.

On the face of it, given P, it seems warranted that the prospects for successful affiliation with the mother state (and thus, for the plebiscite among the nonsecessionists to in fact constitute a *real* choice between *viable* alternatives) would be better in (2) than in (2*). In either case, however, it will remain an empirical question whether or not successful affiliation with the mother state is a real option. And if such affiliation is not possible (which is, I think, by far the most plausible situation) then perhaps the case for the *initial* secession should be regarded as weakened. This is so because the nonsecessionists at “the end of the line” of one or more votes on secession will not be rectified by yet another application of the majority principle in their own case, simply because they will not be given a real choice between viable alternatives. Premise (a) falters. Instead they have no other alternative than to remain in the separatist state that was coerced upon them in the previous secessionist vote. Their individual right to political liberty will thus be violated.

Against this backdrop, it seems reasonable to advance a point made by Alan Patten: When it is impossible to arrange boundary matters in a way that circumvents having to bereave the nonsecessionists of their preferred association, then it might be the best solution to retain the initial secessionists within the mother state. Instead, the *intra-state* autonomy of the secessionists should be improved. This will provide them with an enhanced self-rule identity, while the nonsecessionists can simultaneously keep their preferred (statewide) identity. This is so, because, generally speaking,

a distribution in which all get some of what they want should be regarded as superior to one in which a majority gets all of what they want while the minority get none. And where this is true, a closer approximation to the ideal would seek to give everyone some degree of membership in their preferred association (Patten 2002: 579).

I find this principle congenial. Patten is also right when he points out that a clear asset of intra-state autonomy arrangements is their potential for approximating the realisation of that principle.

²³ As Wellman himself acknowledges, states are territorially defined for good reasons, as their functional performance is crucially dependent upon this feature. (Cf. also Section 2.4 above.)

When we are now sensitive to this point, it should be more apparent that Wellman's theory is prone for rejection. It is simply excessively permissive to allow for secession by way of a majority vote in the secessionist territory. There will always be nonsecessionists residing on that territory, and they have a legitimate interest in maintaining 'membership in their preferred association' (which is generally the mother-state).

4.6 Concluding Remarks

Wellman's theory of secession endorses a hybrid model of justification. This enables him to largely satisfy the first part of the Tension-Requirement. However, to fulfil the second part of that requirement (and thus outperform the Just-Cause approach), his theory must be able to demonstrate that a liberal model of justified political power *should* incorporate voluntaristic elements. His theory entails two attempts to that effect. The first fails. The second is incomplete, and can thus be strongly challenged.

His approach does pose one serious threat to Just-Cause theory, however. The balancing effect that stems from his hybrid model of justification dismantles the initial case for interpreting individual political liberty as vindicating intra-state autonomy arrangements only. The Just-Cause theorist is therefore forced to invoke a different rationale to sustain that latter assertion. This can be done, however, by invoking the argument from 'securing the legitimate interests of the nonsecessionists'.

For those not yet convinced: In the next chapter I will pick up the thread and develop a novel argument against secession that reinforces the case for a modest interpretation of individual political liberty.

The Value of Societal Pluralism

A central lesson of Chapter 2 was that liberal egalitarianism is committed to liberty in two senses: One must ensure both negative and positive freedom. One of the tasks I will undertake in this chapter is to say more on the issue of blending proportions. I will start out with arguing that liberal morality, in order to honour its philosophical linkage to the Enlightenment, must assign considerable importance to positive liberty. Thus, so-called competency-rights – which enhance an individual’s ability to scrutinize the value of her current goals and commitments – must be accorded a prominent place in a proper set of rights and liberties. I will further argue that societal pluralism has the potential for contributing to such enhancement (or what I will interchangeably refer to as facilitation of individual competency). When combined with a Lockean notion, which holds that curtailment of individual liberties are morally forbidden, these assertions will yield a novel argument against secession, *the argument from plurality*. If valid, this argument adds leverage to the liberal case for interpreting the principle of individual political liberty as vindicating intra-state autonomy arrangements only.

5.1 Retaining the Enlightenment Spirit: A Progressive Liberalism

The political philosophy of liberalism has clear intellectual connections to the period that spans from the late seventeenth century and throughout the eighteenth, in various (mostly European) countries. This time is often referred to as ‘the Age of Reason’, or ‘the Enlightenment’. On Jeremy Waldron’s view, the relationship between liberalism and the Enlightenment “cannot be stressed too strongly” (1987: 134). Others have described the former as an “heir” of the latter (Halberstam 1998: 462) or as its “principal political theory” (Bronner 2004: 41). However, scholars differ as to whether the Enlightenment should be viewed as a unitary movement or rather as “a series of debates, which necessarily took different shapes and forms in particular national and cultural contexts” (Outram 1995: 3). This notwithstanding, according to Dorinda Outram (who resides with

the latter position), most can agree that the Enlightenment was “a critical enterprise, committed to engagement with actuality” (ibid.: 4).

In a recent contribution, Stephen Eric Bronner (2004) is concerned with identifying common ground. Leaning towards the unitary position, he seeks to define what he refers to as the “spirit” of the Enlightenment:

Just as Montesquieu believed it was the spirit of the laws, rather than any system of laws, that manifested the commitment to justice, the spirit of Enlightenment projected the radical quality of that commitment and a critique of the historical limitations with which even its best thinkers are always tainted. Empiricists may deny the existence of a “spirit of the times”. Nevertheless, historical epochs can generate an ethos, an existential stance toward reality, or what might even be termed a “project” uniting the diverse participants in a broader intellectual trend or movement (ibid.: 4).

Albeit emphasizing that his approach implies bracketing together “a loose assemblage of intellectuals” (ibid.: 15-6), on Bronner’s view, “what unified them made the cumulative impact of individual thinkers and national intellectual trends far greater than the sum of their parts” (ibid.: 11). Therefore, the Enlightenment should be presented as “an overarching political enterprise and a living tradition” (ibid.: 16). In my brief outline I will adopt that kind of approach. I thereby endorse Bronner’s claim that the Enlightenment should be viewed “less as a dead historical artifact than as the necessary precondition for developing any form of progressive politics in the present” (ibid.: 10).

The spirit of the Enlightenment was emancipatory, in the sense that it viewed society as an *artifact*. This refers to the belief that no social arrangement is beyond the grasp of human engineering: The world can be changed, and individuals have the right to change it (Bronner 2004: 34). But to be able to transform one’s social surroundings, one must also understand them. Marked optimism about the latter possibility was another central characteristic of ‘the Age of Reason’. As Jeremy Waldron puts it,

The Enlightenment was characterized by a burgeoning confidence in the human ability to make sense of the world, to grasp its regularities and fundamental principles, and to manipulate its powers for the benefit of mankind. [...] The drive for individual understanding of the world is matched [...] by an optimism at least as strong about the possibility of understanding society. In one aspect, this optimism is the basis of modern sociology, history and economics. But it is also the source of certain normative attitudes – I want to say distinctively *liberal* attitudes – towards political and social justification. It is the source of an

impatience with tradition, mystery, awe and superstition as the basis of order, and of a determination to make authority answer at the tribunal of reason and convince us that it is entitled to respect (1987: 134).

As seen earlier, these ideas lay the ground for liberalism's (consent-based) approach to the justification of political power. For our purposes in this chapter, however, it is more important to focus on the Enlightenment's notion of *progress*, which is implicitly alluded to in Waldron's quote.

To the thinkers of the Enlightenment, progress was about bringing light to "what had once been shrouded in darkness". Its content was the enhancement of individual moral autonomy and the critical use of reason. Progress was thus linked to "the extension of freedom and the exercise of the intellect" (Bronner 2004: 19-20). It is important to add right away that the concept does not entail an assumption of *absolute* truths. It is not about a journey towards some ultimate end. Instead progress is viewed as a continuous and never-ending critique of the *current* truths. It is what Bronner calls a "regulative ideal". Thus, the issue for the Enlightenment thinkers was "the establishment of conditions in which truth might be pursued" (ibid.: 21-2, 29). Indeed: There has been a "widespread notion", writes Peter Gay, "that Enlightenment philosophers believed in the inevitability of progress". But this is only a myth, which overlooks one important distinction:

when we speak of "progress" we can mean either that progress is possible if we act in certain specified ways (if, for example, we bring our reason and our experience to bear on a social problem), or that progress is inevitable, inherent in history. Only the latter can properly be called a theory of progress – the former is the mood that lies at the bottom of reformism. But it was precisely the reformist, not the metaphysical, conception of progress that dominated Enlightenment thought (1954: 379-80).

And here we have arrived at a paramount connection between the legacy of the Enlightenment and liberal egalitarian morality: To be able to honour the emancipatory credentials of the former, the latter must ensure that its set of liberties include rights that serve to facilitate individual competency. Put differently, the notion of progress must be retained by securing the *conditions for critical scrutiny*, on the part of each citizen, of the traditions and values that are currently established in society. We recognize this as the crucial content of positive freedom (cf. Chapter 2).

So, progress is dependent upon *questioning* the legitimacy of different spheres of tradition, such as the family, civil society, state, and culture. A central premise is the idea that sociological variables can have profound impact on individuals: As Bronner puts it, “[o]nce differences [between individuals] were understood in sociological rather than religious or racial terms [it was believed to be] possible to better the lot of the most victimized” (2004: 35). Obviously, this further entrenches the connection between the Enlightenment ideal of emancipation and the requirement of competency for true freedom.

Moreover, the questioning must never stop. The liberal egalitarian can never be completely content with her current society. Her commitment to positive freedom and the accompanying notion of progress requires her to secure favourable conditions for *continuous* critical scrutiny. This alone makes further progress possible (ibid.). Adherents to liberal egalitarianism must be aware of the restrictions that are inevitably imposed on them by the perspectives of their own time. Therefore, holds Bronner,

[p]rogress requires situating the individual within a context and fostering the ability to discriminate between those constraints that are necessary and those that are not: the implicit injunction to contest atavistic restraints on personal freedom is precisely what renders progress “political.” (ibid.: 37).

To be more concrete: Recall from Chapter 2 that the liberal egalitarian commitment to competency is a commitment to equalize unchosen material and natural endowments. This idea is clearly resonant with the thinkers of the Enlightenment. They regarded such gaps in resource allocations (e.g. regarding economic means) as important sources for differences in freedom between individuals. An “equality of life chances” became a pivotal objective. Thus, the spirit of the Enlightenment calls into question the purely formal account of freedom conveyed by the champions of strict negative liberty (Bronner 2004: 29, 47, 55).

It is interesting to view this in relation to assertions made in *Power*, the concise yet famous work by sociologist Steven Lukes. According to Lukes, an adequate conception of the exercise of power must include both of the following situations:

A may exercise power over *B* by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants. Indeed, is not the supreme exercise of power to get another or others to have the desires you want them to have – that is, to secure their compliance by controlling their thoughts and desires? One does not have to go to the lengths of talking about *Brave New World*, or the world of B. F. Skinner, to see this: thought control takes many less total and more mundane forms, through the control of information, through the mass media and through the processes of socialisation (1980: 23).

I think Lukes is right. What's more, his assertion sheds important light on the necessity of crucially attending to positive liberty, that is, to ensure facilitation of individual competency. Thus, the connection between liberal egalitarianism and the Enlightenment (with the latter's notions of emancipation and the conditions for progress) is even further elucidated.

To sum up, the upshot of this section is as follows: Competency is required for true freedom; the ideal of emancipation is central to the Enlightenment, whose spirit must fill any progressive political theory; to honour that spirit, liberal egalitarianism is committed to give competency-rights a prominent place in a satisfactory set of rights and liberties.

5.2 The Value of Societal Pluralism

If I was on target in the preceding section, then liberal egalitarianism must be markedly concerned with securing rights and liberties that facilitate individual competency. To briefly recapitulate from Chapter 2: Competency-rights are supposed to better the conditions for intelligent choice on the part of the individual citizen regarding her goals and life projects. Crucially, her choice is competent only insofar as it is taken with awareness of alternative views about the good life. Moreover, her choice should be regarded as continuous in nature. She must be endowed with conditions that facilitate *re*-examination of her current conception of what the good life consists in. Therefore, the liberal society takes great care to ensure a free flow of information: The press is free, as well as artistic and political expression, etc. The underlying idea seems to be that this will result in a society that displays a *wide range* of different views and conceptions of the good life. And further, that this diversity in turn will aid each citizen in her (continuous) process

of evaluating various conceptions of the good life (including her own), and choosing between those conceptions. I will call this *the diversity-thesis*, D.

If D is correct, then, to favour intra-state autonomy arrangements over inter-state ones as a solution to secessionist conflicts, can be regarded as *a radical way of facilitating competent choice*. This proposition is in need of further elaboration, but as this chapter unfolds it will eventually enter into the contra-secession argument from plurality. In this section I will briefly explore the descriptive premises of that argument.

5.2.1 Providing Diversity

D is a two-fold assertion. The first part is simple: Maintaining societal diversity, rather than reducing it, will result in *more* encounters between people who adhere to a *wider* range of beliefs about the good. It strikes me as sensible to assume that, as co-citizens, people will naturally engage in a higher number as well as a wider range of encounters. When international borders divide people, then various practical conditions yield a reduction in both planned and random interaction. I do not intend to ground this assertion any further here. I will assume, all else being equal, that maintaining intra-state diversity will result in more frequent as well as more varied encounters, than in the case of an inter-state solution to the secessionist conflict. This move should not spur widespread protest. The more tricky part is what follows.

5.2.2 Drawing Benefits from Diversity

The second part of D is less clear-cut than the first. This is so because diversity is not valuable in the relevant sense unless it actually helps people to broaden their horizon. Societal pluralism must prove beneficial to an individual's process of choosing and re-examining her conception of the good: Diversity must facilitate competency. What does this amount to?

On my reading, the 'awareness of different views about the good life', which is a central notion in Kymlicka's outline of competency rights (cf. 2.3), entails assessing those alternative outlooks in a *fair, rational, and unbiased* way. An encounter between person A and person B will not be constructive as long as A, B, or both, come to the "meeting" with a biased way of perceiving the other person's outlook and commitments, *and* that this bias persists despite of the encounter. If so, societal diversity has not facilitated

competent choice. Even though it may have raised the probability of an encounter in the first place, a beneficial outcome in the relevant sense is contingent upon a certain level of *open-mindedness* in the meeting situation. Can societal diversity be of help in this respect? I will now briefly address a couple of hypotheses about the prospects of achieving a facilitation of competency.

I begin with the bad news. *Ethnocentrism* may be a powerful and perilous force to reckon with. The point is that such chauvinism may distort our perception. It may yield wrong assessments of the potentially palpable (or impalpable) features of other people's commitments and traditions. Whether one approves of another person's customs and conceptions or not, the important thing for competency is that we *get our perceptions right*. Unfortunately, however, well-established psychological theory points to a human tendency to stereotype other persons. This disposition is linked to characteristics of our perception and our processing of information. Following Atkinson et al.:

Whenever we perceive any object or event, we compare the incoming information with memories of previous encounters with similar objects and events. [...] [M]emories of objects and events are not usually photographlike reproductions of the original stimuli but simplified reconstructions of our original perceptions. [...] [S]uch representations or memory structures are called **schemas**; they are *organized beliefs and knowledge about people, objects, events, and situations*. The process of searching in memory for the schema that is most consistent with the incoming data is called *schematic processing* (2000: 608).

Further:

Schematic processing typically occurs rapidly and automatically. [...] Without schemas and schematic processing we would be overwhelmed by the information that inundates us. [...] But the price we pay for such efficiency is a bias in both our perception and our memories of the data (ibid.: 609).

Such biases and mistakes serve to entrench stereotypes and make them very persistent. In fact, in addition to selectively diverting our attention to stimuli that confirm our stereotypes, we also distort our perception of data that would disconfirm them (ibid.: 613-4).

Given these psychological predispositions, it may be natural to make the simple assumption that it is easier to approach alternative conceptions of the good with an open

mind if the persons who pursue them are not perceived as foreigners. At least, abstractly speaking: If more borders and obstacles are erected between “us and them”, then it is easier to be hostile (and thus less receptive) towards other ways of life. Accordingly, on the face of it, it might seem the better alternative to maintain diversity *within* the current state.

Here one might object that it is not *state borders* that may create hostility, but rather the *content* of the different outlooks on life. Call this objection X. Now, how well founded is X? Indirect validation is provided by studies of a somewhat related issue, namely the prospects of having immigrants adapting to the cultural orientation of their new country. It is suggested that “[d]istance between cultural orientations may have an influence; the greater the cultural differences, the less positive is the adaptation” (Bierbrauer & Pedersen 1996: 416).

Now let us imagine the following: As an “average” Norwegian (whatever that may signify) I may be more hostile to the philosophy of life belonging to an “average” person of Somali heritage (again, whatever that may signify) even if she is living *in my hometown*, than towards that of a Swede – or any other individual who happen to share most of my Norwegian conceptions of what the good life consists in (consumerism, cross-country skiing, brown cheese (on reflection, probably unique to Norwegians!), and what have you) – who lives *abroad*. I concede that this is a reasonable objection to make. But it does not really threaten the initial assumption. Even though one recognizes X, it is not inconsistent to also claim that (Y) I will be *more* receptive to the outlook of my Somali co-citizen when she lives in my hometown, than if I was never personally exposed to her ways of life at all. So, all else equal, living in societal proximity may nevertheless enhance a person’s receptiveness towards alternative conceptions of the good life.

However, the persistent critic may still object that intimate interaction with “distant” ways of life will not always have the effect that I ascribe to it. Instead, she may hold, the opposite will prevail: Close contact between Norwegians and Somalis will cement (in an irrational manner) their respective initial conceptions of the good. Again, the idea is that the tendency to stereotype can be expected to throw a spanner into the works.

Obviously, people are different. They may vary greatly, both in their ability to, as well as in their motivation (or the lack of such) for exploring different conceptions of the

good life. Note, however, that the value of societal pluralism is not dependent upon the possibility of turning each individual into a “xenophile”, an “adventure-machine” who constantly craves to explore other ways of life. This will not, and need not, be the case. In fact, when viewed in isolation, the only requirement for favouring intra- over inter-state autonomy is that the former does a *better* job of enhancing competent choice than the latter. And even though the prospects of constructive encounters are poorer when conceptions of the good are correspondingly more divergent, there is evidence that the perils of ethnocentrism need not prevail as long as certain conditions for constructive encounters are in place. As we will now see, in the case of liberal-to-liberal secession the chances of meeting those conditions are not at all dim.

The contact hypothesis holds that “sheer contact between two groups is enough to remove hostile attitudes to one another”. Certain contextual hallmarks are needed, however, to secure that beneficial result. These conditions include “equal status, co-operation and some degree of intimacy” (Argyle 1994: 194-5). For some groups, such as immigrants, these conditions are rarely met. Immigrants are often poor in socio-economic terms. They are not (immediately) awarded equal citizenship rights. And geographically they are often concentrated rather than dispersed, which obviously reduces their amount of intimate encounters with nonimmigrants. Taken together these characteristics make a poor case for fulfilling the conditions of the contact hypothesis.

Unlike in the case of low-status immigrants, however, it seems plausible to assume that the members of the secessionist group will not be subject to uniform status attribution. Recall that I only consider well-established and well-functioning liberal democratic welfare states. In such cases it is very likely that the secessionists are, as their co-citizens alike, heterogeneous rather than homogenous on a range of variables that determine status, such as socio-economic measures. Further, the members of the group obviously enjoy equal citizenship rights, with all the benefits (e.g. welfare contributions) and burdens (i.e. paying taxes) that involves. And while immigrants often are naturally in a position in which they become net-benefactors from redistributive policies, it is straightforward to assume that the secessionists contribute to, and benefit from, the welfare “project” on a par with other groups in society. Thus, the negative stereotypes that often cling to immigrants (“they are welfare-state parasites”) will presumably be harder to cast on the members of the secessionist group. Further, as far as contributing to

the maintenance of public redistributive institutions can be seen as a vital cooperative endeavour, then, the condition of cooperation is in that sense also in place. If the contact hypothesis is correct, one may thus expect a fortunate state of things concerning hostility levels. The last variable, the condition of intimacy, will vary according to the secessionists' degree of geographical dispersal.

Before I proceed, let me address an objection that might have arisen in response to what I have just said in the previous paragraph. One might object that a central assumption – that secessionists will not be stereotyped as welfare-state parasites simply because they *are not* – fails to take into account a point that I made earlier, namely, that the process of stereotyping is *irrational*. I concede that this may reduce the probability of achieving competency-facilitation. It is obviously not given that the other groups in society will carefully attend to the factual evidence before venturing their judgment of the secessionists. On the contrary, in light of the human tendency to rely on irrational processes of belief-formation, the opposite may be regarded as more probable. But, again, I would like to counter this with the claim that the conditions for *sorting out* the mistakes which we potentially make when perceiving our surroundings, will nevertheless be *better* with an intra-state solution to the secessionist conflict. Erecting more barriers between groups will not prove beneficial in this respect. Our psychological predispositions will not disappear by redrawing territorial boundaries.

Related to this, it is natural to assume that the secessionist conflict *itself* may have created raised hostility levels and facilitated stereotyped perceptions of “the others”. But, again, it strikes me as sensible that the prospects of getting our perceptions right will still be brighter under conditions of maintained pluralism, in which the possibilities for communication between group members will be as ample as possible. To use a metaphor, the norm for reacting to diplomatic crises between sovereign states, namely to withdraw one's ambassadors, is paradoxical. Albeit largely a symbolic act, when levels of conflict are high, it is indeed counter-constructive to sever channels of communication. Now, let me call attention to one additional point, which may serve, I believe, to further substantiate my assertions here.

The liberal state is well established. The groupings it contains have lived together over a significant period of time. It is therefore plausible to assume that the secessionists, on a par with other citizens, are experienced interpreters of, and contributors to, the

cultural codes of conduct and communication utilized in society. An important source of conflict is thereby diverted from the scene. As Michael Argyle writes,

[w]hen people from different cultures meet, there is infinite scope for misunderstandings and confusion. This may be a matter of misinterpreting the other's communications, verbal or nonverbal. [...] The result of these cross-cultural misunderstandings is likely to be that each person rejects the other as one who has failed to conform to the standards of civilized society, and regards him as impossible to get on with (1994: 195-6).

Not the best basis, you would say, for a constructive encounter in which both parties can fairly assess the strengths and weaknesses of their respective conceptions of the good? I agree. Luckily, then, this unfortunate situation does not to any great extent haunt the case of liberal-to-liberal secession. This is so for the following reason: In such contexts, the negative influence of X will be significantly reduced because the secessionists themselves share with their current co-citizens (important parts of) a liberal outlook on life. For instance, both groups recognize liberal individual rights. And, crucially, such similarities are more easily communicated by virtue of those very similarities.

Obviously, in the case of such convergence in beliefs, the argument from plurality may seem to be (i) somewhat less relevant for our purposes; but, at the same time, the convergence also (ii) helps validate the argument's descriptive premises. The mild "paradox" of this situation is eased if one concedes that (i) does not apply in cases where the secessionists adhere to crucial liberal principles, but at the same time possess some cultural traits that are significantly different in important ways from that of the other citizens. Examples of this abound. Consider for instance the Catholics of Northern Ireland in Great Britain (religion), the Catalans and Basques in Spain (language), and the Quebecois of Canada (language). None of these groups, I think, can reasonably be said to differ from their co-citizens on questions about, for example, the commitment to liberal democratic rule. They nevertheless contribute markedly to societal diversity through their alternative religious faith and bilingualism. In addition to such heavily exposed differences, the secessionist groups will probably display a range of more subdued ones as well, such as variations in cuisine, folklore, etc.

This survey of psychological theory has admittedly been brief. A note of caution is appropriate. It is not my task here to authoritatively settle the empirical question of

whether societal diversity will enhance people's ability to examine and revise their own current conception of the good life. That job is obviously better suited for psychologists and sociologists. Thomas F. Pettigrew (2004: 232-8) lists several challenges that the discipline of social psychology should solve before its research can be soundly translated into policy influencing prescriptions that are universal in scope. Prime among these are problems of external validity ('the laboratory versus the "real world" issue'); the question of whether policy applications can show cross-cultural and cross-societal consistency; and the current fact that "[s]ocial psychology is largely an inductive, empirically driven science" (ibid.: 232). These challenges suggest the need for a careful case-to-case approach when one determines the validity of the diversity-thesis. In other words, the value of societal pluralism should be assessed separately in each particular case.

Moral reasoning must be sensitive to its use of descriptive premises. I therefore take the liberty to be first in emphasizing that the force of the normative argument from plurality is contingent upon the validity of the proposition I have just advanced in this section. I will proceed, however, under the assumption that *societal pluralism facilitates competent choice*, and that it must thus be regarded as a 'competency-right'.

5.3 John Locke's Two Arguments for Restrictions on Freedom of Choice

I will now develop the last part of the argument from plurality. We have thus far seen that liberal egalitarian morality must be markedly concerned with endowing people with rights and liberties that facilitate competency. The preceding section demonstrated that societal pluralism constitutes such a competency-right. The proposition of this section will be that *liberal morality should not allow for curtailment of rights and liberties*. As Raino Malnes (1988) has persuasively argued, John Locke's *Two Treatises of Government* can be interpreted as providing two arguments for such a normative statement.

There are two Lockean arguments for restrictions on individual freedom of choice. The first stems from the necessity of taking into consideration the autonomy of other individuals. It refers to *other-regarding* restrictions on individual freedom. Following Malnes:

It is not implied in the image of human beings as self-determining agents that they are free to define and pursue goals at their own discretion. Locke never intends freedom of action to license every conceivable course of action in any area. [...] A right that is grounded in the value of rational agents living by the light

of their own convictions cannot consistently permit anyone to encroach upon the autonomy of others. It is a restricted right – restricted by the requirement not to prevent other people from exercising the same right (1988: 78-9).

The argument for other-regarding restrictions on personal freedom can be easily translated into an argument for similar restrictions on public choice, that is, popular sovereignty. Writes Malnes,

Locke restricts popular sovereignty so as to dismiss as illegitimate constitutional terms which curtail personal and political liberties. [...] It implies, in practical terms, that people are not permitted to deprive some of their number of freedom, no matter how popular this may be among segments of the population that, e.g., benefit materially from the subjection of others (ibid.: 80).

It is interesting to note that this accords well with the liberal egalitarian idea of fixed standards of good government, which has thus far vindicated a Just-Cause approach to secession.

The second argument for restrictions on freedom is *self-regarding*. This argument is invoked to circumvent that a person can be morally justified in voluntarily curtailing her own rights and liberties. As Malnes puts it, Locke's solution is to hold that an individual's

right of natural freedom [implies] not just a requirement not to transgress on other people's enjoyment of the same right. [...] It [also] involves [...] an obligation not to alienate, or otherwise act so as to jeopardize, one's personal liberties. Thus it is no more permissible not to respect oneself as an agent capable of self-determination, than it is to thwart the potentialities of another (ibid.: 81).

This second argument for restrictions on freedom of choice implies an understanding of freedom as 'continuing' freedom. A person is free in the continuing sense "if the same (manifold) options lie open to him (morally speaking) at every moment of his life, so that he has no second-order option to remove any alternative from the feasible set". 'Self-embracing' freedom, however, encompasses the opportunity to voluntarily renounce parts of the same freedom (ibid.: 83). (Cf. also Section 2.5 above.)

This brief outline should suffice to establish the Lockean case against curtailment of the rights and liberties of individuals. We are now able to wind up the three propositions that will yield *the contra-secession argument from plurality*:

- (i) Competency-rights are crucial in a proper set of rights and liberties;
- (ii) societal pluralism is a competency-right;
- (iii) no curtailment of rights and liberties is allowed; therefore,
- (iv) societal pluralism should not be curtailed.

Put differently, a liberal egalitarian theory of secession must take into account the value of societal pluralism. The commitment to positive freedom helps to single out and ground a novel argument against secession. If separation will yield a reduction in societal diversity, then liberal egalitarians will prefer an intra-state solution to the secessionist conflict. How cogent is the contra-secession argument from plurality? Let me address some possible objections.

On Malnes's view, it is only Locke's first argument for restrictions on personal freedom that is convincing. The second is not. It is far from evident, he writes, that Locke's resort to understanding freedom as continuing is warranted. If not, the argument for self-regarding restrictions on freedom of choice fails to constitute a proper solution to the problem of circumventing voluntary renunciations of rights and liberties (Malnes 1988: 83). Malnes does not, however, provide any rationale that can substantiate his assertion. And even though I am tempted to argue that Locke's second argument may fare a bit better than Malnes claims, I will leave that discussion aside here. The reason is simple: As I will now demonstrate, the force of the argument from plurality can be developed from both arguments. Its cogency is not, however, dependent upon the two in concert. Let us assume that Malnes's rejection of Locke's second argument is correct. The argument from plurality can nevertheless rely on the other-regarding restrictions on personal freedom. What is the rationale behind this?

It is a *paternalistic* element in the argument from plurality: It tells the secessionists (and the nonsecessionists) that, all else equal, they will be better off with their current plural society than with a split into two more homogenous polities. This paternalism can be *hard* (i.e. to act on behalf of the interests of competent agents, but against their will) or

soft (i.e. to act on behalf of the interests of noncompetent agents, such as the children of competent agents, or future generations).

The first type of paternalism can be warranted if Locke's second argument is sound: The secessionists are not morally allowed to secede because this would reduce societal pluralism, and thus amount to a curtailment of their own competency-right to diversity. The soft version of paternalism, on the other hand, can be justified by grounding it in the (less radical) first argument: The secessionists are not morally allowed to secede because this would reduce societal pluralism, and thus amount to a curtailment of their children's (and future generation's) competency-right to diversity.

So, even if the strategy that makes use of hard paternalism is ruled out, the argument from plurality can still function well. By making paternalism soft, it relies instead on Locke's other-regarding restrictions on individual freedom of choice. It is the regard for *others* – that is, noncompetent agents – that restricts the adult secessionists.

Allen Buchanan regards (soft) state paternalism, which aims at securing the good of noncompetent agents, as a very strong argument against secession²⁴. He does, however, qualify its application to cases where the secession would “form an illiberal society in which people will not be given an opportunity to make an *informed and free choice* between a liberal and an illiberal form of life. It has no force if there is *freedom to exit* the illiberal society” (1991: 101, my emphasis). This assertion is not cogent.

Firstly, a right to *exit from* is indeed a shallow one if it does not entail a corresponding right to *immigrate to*. Following Kok-Chor Tan:

What would be the point of [a right to emigration] if it is not reinforced by the demand that states also be obliged to accept immigrants? [...] A right to emigrate from a country without a corresponding right to immigrate to a country is a facile right. In the domestic setting, even when one leaves one's private association one is able to join another, even if it is the default community, as when one leaves the church and joins the secular community. In international society, on the other hand, one cannot leave one's country unless also adopted by another country (1998: 292-3).

²⁴ Let me inform that Buchanan uses the term 'soft' paternalism slightly different from a terminology proposed by Gerald Dworkin (2005). Buchanan refers to paternal restriction of adult secessionists as an act of 'soft' paternalism, as long as the restriction is done to protect the good of *non*competent agents (1991: 101, 124). That is consonant with my usage of the term. In Dworkin's terminology, however, 'soft' paternalism refers to acts that are undertaken to *determine the competency* of an agent. If the agent is found to be acting both voluntarily and knowledgeably, then interference subsides (2005: Section 2). For a tour de force of the concept of paternalism, see the excellent anthology edited by Rolf Sartorius (1983).

Secondly, and more important, it is good reason to believe that an illiberal society would not be concerned with providing their citizens with neither (i) a liberal education nor (ii) a free flow of information across the state border. If so, the prospects for developing a sufficiently informed and competent citizenry, who could thus *relevantly* exercise the right to exit, seem dim. For this reason Buchanan's argument is clearly deficient or even misplaced altogether. He clearly mentions that the choice to leave (or stay) must be 'informed and free', but this is a small comfort as long as the force of the argument from paternalism is made wholly contingent upon the sole requirement of available exit.

Instead, the separatist state should be required to also provide its citizenry with conditions that secure the establishment of sufficient competence. To put it simple, in that respect, what is needed is to recognize the validity of the argument from plurality.

5.4 A Counter-Intuitive Implication: Restricting Consensual Secession?

The observant reader may have noticed a potential weakness in my argument thus far. The problem goes as follows: The Lockean moral case against curtailment of rights and liberties has a counter-intuitive implication, namely, that *consensual* secession (cf. Section 1.1) will also be morally impermissible. This is an important observation, and it may a weighty objection to the argument from plurality. The argument, in the form spelled out above, must therefore be regarded as tentative until it can accommodate this problem. I do not make reservations here, however, because I think that providing a solution will not be excessively difficult. My proposition in this section is that the plurality argument should be elaborated by including a *threshold requirement* for sufficient diversity. When this is done, the argument will accord more easily with our liberal egalitarian intuitions.

First, let me elaborate briefly on the putative problem. It seems that the argument from plurality cannot allow for *any* actions that would bring about societal homogenisation, as that would imply an infringement on the individual competency-right to diversity. This is so because, in a sense, any reduction in societal diversity can be said to represent a curtailment of that right. But what if (1) the political divorce is consensual; *and* (2) the post-secession polities will experience only *marginal* reductions in societal diversity? In such cases, says the critic, the prescriptions made by the argument from plurality run counter to our considered judgments. To deny secession under such circumstances (in

which both 1 and 2 are satisfied) is counter-intuitive. It will simply amount to an excessively strong restriction of liberty.

Now, if we refine the argument from plurality, by way of incorporating a threshold for minimal diversity, the number of such cases will be reduced. This is so because as long as the post-secession polities satisfy that threshold, the argument from plurality will not restrict secession. Is this move *ad hoc*? I think not. It should be clear from earlier passages (cf. e.g. Sections 2.3.1-2 and 4.2) that the concept of a threshold can and should be recognized within liberal theory. To reiterate: Reliance on various threshold concepts does in fact appear as downright required for the task of balancing the commitments to negative and positive liberty. For example, the pure rationalistic approach to political power retained its cogency by introducing a threshold for minimal functional performance. If it had failed to incorporate such a threshold, then forceful annexations of other liberal states could become justified. Obviously, that would have left liberal egalitarians with an impalpable model of political power, as well as an anemic account of political liberty.

A persistent critic may perhaps cling to that latter expression, and claim that even a threshold-sensitive argument from plurality will yield an anemic conception of political liberty. The rationale could go as follows: The competency-right that grounds the argument from plurality does not carry enough moral weight as to thwart the (more fundamental) right to political liberty. But this criticism is not well founded. It has lost out of sight the pivotal lessons of Chapters 3 and 4, in which it has already been shown that a Choice-right to secede (grounded in the principle of political liberty) is not easily compatible with an all-things-considered liberal egalitarian approach.

To be precise: In Chapter 3 I argued against the pure voluntaristic model of political power, whereas Chapter 4 dismissed Wellman's hybrid model. The upshot in both cases is nevertheless the same: Liberal egalitarianism should prefer an intra-state accommodation of the secessionist demands for enhanced self-rule. And the argument from plurality provides the Just-Cause theorist with a novel argument to that effect.

To make it perfectly clear: Rather than *single-handedly thwarting* the case for a Choice-right to secede, the argument from plurality should be viewed, neither more nor less, as *providing further support* for an intra-state solution to the secessionist conflict. However, when paired up with the argument from 'securing the legitimate interests of the

nonsecessionists' (cf. 4.5), it adds substantial leverage to the liberal case for a modest interpretation of the principle of individual political liberty.

What about the remaining cases, then? For them secession is (1) consensual, but (2*) the post-secession politics will experience reductions in societal diversity that violate the threshold requirement. In these instances the argument from plurality will not allow separation. This cannot be circumvented. Let me emphasize, however, that my aim in this essay has not been to discuss cases that satisfy condition (1). We cannot rule out that that condition may alter the moral calculus in ways that will render (diversity-reducing) secession justified, even though the argument from plurality is valid. These cases deserve a thorough treatment of their own. But that must be a task for another occasion. This brief section may herald, however, that the development of *a liberal theory of consensual secession* has the potential to make up an intriguing challenge.

5.5 Concluding Remarks

The competency-right to diversity is only *one among various* liberal individual rights and liberties. Together they make up a certain set, which, when satisfied, pertains to establish the justified wielding of political power. But those rights and liberties are not on a par with each other. Their moral importance varies.

This chapter has shown, however, that the right to societal diversity is not an insignificant right. And when awarded its rightful place in liberal egalitarian morality, it adds leverage to the case for a Just-Cause approach to secession.

Conclusion

This essay has provided a defence of the Just-Cause approach to secession. If my argument has been sound, then future work in this area – when done from the perspective of liberal egalitarian morality – should be particularly concerned with developing that liberal approach. In this closing chapter I will briefly summarize some of the most crucial insights that have led to that proposition.

In so doing I will take inspiration from the following quote by Robert Nozick, in which he airs a view on the characteristics of works in philosophy:

[T]he usual manner of presenting philosophical work puzzles me. Works of philosophy are written as though their authors believe them to be the absolutely final word on their subject. But it's not, surely, that each philosopher thinks that he finally, thank God, has found the truth and built an impregnable fortress around it. We are actually much more modest than that. For good reason. Having thought long and hard about the view he proposes, a philosopher has a reasonably good idea about its weak points; the places where great intellectual weight is placed upon something perhaps too fragile to bear it, the places where the unravelling of the view might begin, the unprobed assumptions he feels uneasy about (1974: xii).

So, to somewhat live up to that description, the findings of this essay will be summarized by pointing out the weak spots of each liberal perspective on secession. This simultaneously reveals the areas in which the partisans of each position should, as I see it, concentrate their future efforts. I will go through it chronologically.

Chapters 2 and 3 gathered strong presumptive evidence in favour of the Just-Cause approach. The *pure* voluntaristic model of political power was found to be quite weak relative to its rationalistic rival. While the former clearly honoured the commitment to popular sovereignty, it also implied eradicating the commitment to fixed standards of good government, in equally clear fashion. The rationalistic model, on the other hand, was able to somewhat balance both commitments (albeit by paying the (manageable) cost of denying the voluntaristic expression of popular sovereignty). This vindicated Just-Cause theory as the proper liberal approach to secession.

Still and all, in Chapter 4 that presumption faltered. We saw that Wellman's Choice-theory, with its *hybrid* model of political power, constituted a substantial challenge to the partisans of the Just-Cause approach. No longer could they invoke the persuasive argument from the necessity of balancing the incongruous commitments of liberal morality (cf. the Tension-Requirement): Its rival could (if not in a more elegant fashion) venture a somewhat equally plausible way of accommodating both of the topical liberal commitments. (Note, however, that in order to get that result, the most radical version of Choice-theory – which incorporates the pure voluntaristic approach to political power – had to be abandoned.)

Here we have arrived at a weak spot of the Just-Cause approach. The strategy that convincingly invalidated the pure voluntaristic model of political power does not hit Wellman's theory a mortal blow. To vindicate their perspective the partisans of Just-Cause theory must therefore have recourse to other liberal egalitarian rationales. A new possible strategy is to specify the content of the standards of good government. That is, one demonstrates what a proper set of liberal rights and liberties amounts to, and how these crucial aspects of a good governmental order will be infringed upon in Wellman's Choice-theory. For the sake of simplicity, let us refer to this as *the strategy of specification*.

I find that strategy to be promising. I have therefore provided two arguments in accordance with it: Chapter 4 presented the argument from 'securing the legitimate interests of the nonsecessionists'; Chapter 5 developed the argument from 'plurality'. The normative force of these arguments flows from the core of liberal morality: They both belong to a properly specified set of liberal individual rights. What's more, if we sanction state breaking, then it seems virtually impossible, due to the very nature of these rights, to avoid infringing upon them. (A moment's reflection will reveal the range of practical problems that confronts us in that latter respect. Consider, for instance, the difficulties involved in accommodating every group of nonsecessionists under Wellman's theory. Unless the groups with different identity-preferences reside in homogenous territorial entities, and, further, that these entities are located in favourable vicinity to the group(s) with whom they want to remain affiliated, then the right of the group members – to maintain their identity of choice – will be violated. Further, it seems plausible to expect that these difficulties will increase in the face of each new decision to secede. This is so because each state breaking will naturally reduce the number of identities that a citizen

can relevantly choose to affiliate with. Similar points were discussed in Chapter 4.) Thus, if liberal egalitarians go for Wellman's Choice-approach to secession, they should (by now) be sufficiently aware of the costs involved: Important liberal individual rights will have to be sacrificed.

Note that my contribution here has been preliminary. The Just-Cause theorist should be concerned with developing further arguments, if attainable, in accordance with the strategy of specification. The logic is simple: The liberal egalitarian case against the Choice-approach will be reinforced for each new right that can be proved to be in jeopardy.

What about Just-Cause theory? What concessions, if any, does that approach have to make? The strength of the Just-Cause approach is that it seems able to secure a comprehensive set of liberal individual rights, while also *sufficiently* honour the value of group self-determination. Let me stress the italicisation in that last sentence. It is obvious that intra-state autonomy arrangements permit less comprehensive group autonomy than does a full-fledged secession. To this I readily concede. The crucial question, however, is (1) why liberal egalitarian morality, in order to *properly* honour group autonomy, must grant *secessionist* rights. And, further: Even if a proper valuing of group self-determination *per se* in fact requires recognizing a right to secede, it is still a question of (2) what liberal morality – *all-things-considered* – should do. These points were rehearsed in Chapter 4.

So, in order to vindicate Wellman's Choice-theory as the best liberal approach to secession, its partisans must provide a satisfactory answer to both (1) and (2). I have argued that Wellman himself does not succeed in answering neither.

In the absence of a plausible answer to these questions it seems (at least for the time being) that *the Just-Cause approach is the best overall liberal egalitarian theory of secession*; Just-Cause theory seems capable of accommodating a larger number of relevant liberal commitments than does its rival.

It is crucial to underline the following: The above conclusion is *tentative*. It may perfectly well be upset by future research. This essay has sought to identify some of the most pressing issues that remain to be convincingly addressed, or further substantiated, by each liberal approach to secession. It is my hope that this clarification may offer guidance for adherents to both liberal perspectives.

By emphasizing the tentative nature of my conclusion I further hope to convey a humble and respectful approach to a theme that incorporates some core questions of political philosophy. It is a virtue, I think, to force oneself to abstain from excessive assuredness when doing work in this field. As Raino Malnes puts it, questions in normative political theory are “hard”, and “it is no credit to [the field] that it affords easy answers to [them]” (1988: 58).

I close with a quote that further demonstrates the appropriateness of reverence. To make use of Robert Nozick’s metaphorical vigour:

One form of philosophical activity feels like pushing and shoving things to fit into some fixed perimeter of specified shape. All those things are lying out there, and they must be fit in. You push and shove the material into the rigid area getting it into the boundary on one side, and it bulges out on another. You run around and press in the protruding bulge, producing yet another in another place. So you push and shove and clip off corners from the things so they’ll fit and you press in until finally almost everything sits unstable more or less in there; what doesn’t gets heaved *far* away so that it won’t be noticed. [...] *Quickly*, you find an angle from which it looks like an exact fit and take a snapshot; at a fast shutter speed before something else bulges out too noticeably. Then, back to the darkroom to touch up the rents, rips, and tears in the fabric of the perimeter. All that remains is to publish the photograph as a representation of exactly how things are, and to note how nothing fits properly into any other shape (Nozick 1974: xiii).

Exaggerated? A bit too satirical, you will say? That might be so. Still, if we are honest with ourselves, then most of us will recognize, I think, the pertinence of Nozick’s remark. Therefore: Normative argumentation should always be forced on; rationales should be sharpened, reaffirmed, or rejected in the face of novel objections to them; we should welcome well-founded critique; it is a potential whetstone.

Thus, hopefully, the largest portion of interesting work on secession is to be found ahead of us.

Bibliography

Argyle, Michael (1994): *The Psychology of Interpersonal Behaviour: Fifth Edition*.
Hammondsworth: Penguin Books.

Atkinson, Rita L., Richard C. Atkinson, Edward E. Smith, Daryl J. Bem & Susan
Nolen-Hoeksema (2000): *Hilgard's Introduction to Psychology: Thirteenth
Edition*. Fort Worth, TX: Harcourt College Publishers.

Avineri, Shlomo & Avner de-Shalit (eds.) (1992): *Communitarianism and
Individualism*. Oxford: Oxford University Press.

Barry, Brian (2001): *Culture and Equality: An Egalitarian Critique of
Multiculturalism*. Cambridge: Polity Press.

Beauchamp, Tom L. (1991): *Philosophical Ethics: An Introduction to Moral
Philosophy. Second Edition*. New York: McGraw-Hill.

Beran, Harry (1998): "A Democratic Theory of Political Self-Determination for a New
World Order", in Percy B. Lehning (ed.): *Theories of Secession*. London: Routledge.

Berlin, Isaiah (2002): *Liberty: Incorporating 'Four Essays on Liberty'*. Edited by
Henry Hardy. Oxford: Oxford University Press.

Bierbrauer, Günther & Paul Pedersen (1996): "Culture and Migration", Chapter 15 in
Gün R. Semin & Klaus Fiedler (eds.): *Applied Social Psychology*. London: Sage.

Bronner, Stephen Eric (2004): *Reclaiming the Enlightenment: Toward a Politics of
Radical Engagement*. New York: Columbia University Press.

Buchanan, Allen (1989): "Assessing the Communitarian Critique of Liberalism", in *Ethics*, Vol. 99, No. 4: 852-882.

Buchanan, Allen (1991): *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. Boulder, CO.: Westview Press.

Buchanan, Allen (1997): "Theories of Secession", in *Philosophy & Public Affairs*, Vol. 26, No. 1: 31-61.

Buchanan, Allen (1998): "Democracy and Secession", in Margaret Moore (ed.): *National Self-Determination and Secession*. Oxford: Oxford University Press.

Buchanan (2003): "The Making and Unmaking of Boundaries: What Liberalism Has to Say", in Allen Buchanan and Margaret Moore (eds.): *States, Nations, and Borders: The Ethics of Making Boundaries*. Cambridge: Cambridge University Press.

Buchanan, Allen (2004): *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. Oxford: Oxford University Press.

Buchanan, Allen (2006): "Secession", *The Stanford Encyclopedia of Philosophy* (Summer 2006 Edition), Edward N. Zalta (ed.), URL = [<http://plato.stanford.edu/archives/sum2006/entries/secession/>](http://plato.stanford.edu/archives/sum2006/entries/secession/).

Carter, Ian (2003): "Positive and Negative Liberty", in *The Stanford Encyclopedia of Philosophy* (Spring 2003 Edition), Edward N. Zalta (ed.), URL = [<http://plato.stanford.edu/archives/spr2003/entries/liberty-positive-negative/>](http://plato.stanford.edu/archives/spr2003/entries/liberty-positive-negative/).

Cohen, G.A. (2007): "Lecture Two: More on the Distinction Between Justice and Rules of Social Regulation", Handout to lecture held at *The Ethics Seminar*, University of Oslo, April 13.

Daniels, Norman (2003): “Reflective Equilibrium”, in *The Stanford Encyclopedia of Philosophy* (Summer 2003 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2003/entries/reflective-equilibrium/>.

Dworkin, Gerald (2005): “Paternalism”, in *The Stanford Encyclopedia of Philosophy* (Winter 2005 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2005/entries/paternalism/>.

Elster, Jon (1983): *Sour Grapes: Studies in the Subversion of Rationality*. Cambridge: Cambridge University Press.

Feinberg, Joel (1973): “Harmless Immoralities” and Offensive Nuisances”, in Norman S. Care & Thomas K. Trelogan (eds.): *Issues in Law and Morality*. Cleveland, OH: Case Western Reserve University Press.

Galipeau, Claude J. (1994): *Isaiah Berlin’s Liberalism*. Oxford: Clarendon Press.

Gay, Peter (1954): “The Enlightenment in the History of Political Theory”, in *Political Science Quarterly*, Vol. 69, No. 3: 374-389.

Gewirth, Alan (1982): *Human Rights: Essays on Justification and Applications*. Chicago: The University of Chicago Press.

Gray, John (1995): *Liberalism: Second Edition*. Buckingham: Open University Press.

Halberstam, Michael (1998): “Totalitarianism as a Problem for the Modern Conception of Politics”, in *Political Theory*, Vol. 26, No. 4: 459-488.

Hampton, Jean (1997): *Political Philosophy*. Boulder, CO.: Westview Press.

Harding, Luke (2003): “Victim of Cannibal Agreed to be Eaten”, in *The Guardian*, December 4th.

- Harrison, Ross (2005): "Meta-Ethics", in Ted Honderich (ed.): *The Oxford Companion to Philosophy: Second Edition*. Oxford: Oxford University Press.
- Hart, H.L.A. (1961): *The Concept of Law*. Oxford: Clarendon Press.
- Hobbes, Thomas (1975 [1651]): *Leviathan*. London: Dent.
- Hohfeld, Wesley N. (1964): *Fundamental Legal Conceptions as Applied in Judicial Reasoning*. Edited by Walter W. Cook, with a New Foreword by Arthur L. Corbin. New Haven: Yale University Press.
- Jamieson, Dale (1991): "Method and moral theory", Chapter 42 in Peter Singer (ed.): *A Companion to Ethics*. Oxford: Blackwell Reference.
- Kelly, Paul (2005): *Liberalism*. Cambridge: Polity Press.
- Kymlicka, Will (1989): *Liberalism, Community, and Culture*. Oxford: Oxford University Press.
- Kymlicka, Will (1995): *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford University Press.
- Kymlicka, Will (2002): *Contemporary Political Philosophy*. Oxford: Oxford University Press.
- Locke, John (2002 [1690]): *The Second Treatise of Government*. Mineola, NY: Dover Publications.
- Lukes, Steven (1980 [1974]): *Power: A Radical View*. London: Macmillan.

- Malnes, Raino (1988): "Popular Sovereignty and Good Government: A Tension in Contract Theory and a Liberal Dilemma", in Dag Anckar, Hannu Nurmi & Magni Wiberg (eds.): *Rationality and Legitimacy: Essays on Political Theory*. Helsinki: The Finnish Political Science Organisation.
- Miller, David (1995): *On Nationality*. Oxford: Oxford University Press.
- Moore, Margaret (ed.) (1998): *National Self-Determination and Secession*. Oxford: Oxford University Press.
- Moore, Margaret (2006): "The Ethics of Secession and Postinvasion Iraq", in *Ethics & International Affairs*, Vol. 20, No. 1: 55-78.
- Mulhall, Stephen & Adam Swift (1996): *Liberals & Communitarians*. Oxford: Blackwell Publishers.
- Nagel, Thomas (1991): *Equality and Partiality*. Oxford: Oxford University Press.
- Norman, Wayne (2006): *Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State*. Oxford: Oxford University Press.
- Nozick, Robert (1974): *Anarchy, State, and Utopia*. New York: Basic Books.
- Outram, Dorinda (1995): *The Enlightenment*. Cambridge: Cambridge University Press.
- Patten, Alan (2002): "Democratic Secession from a Multinational State", in *Ethics*, Vol. 112, No. 3: 558-586.
- Pettigrew, Thomas F. (2004): "Intergroup Relations and National and International Relations", Chapter 10 in Marilynn B. Brewer & Miles Hewstone (eds.): *Applied Social Psychology*. Malden, MA: Blackwell.

- Pogge, Thomas W. (1994): "An Egalitarian Law of Peoples", in *Philosophy & Public Affairs*, Vol. 23, No. 2: 195-224.
- Pogge, Thomas W. (2002): *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*. Cambridge: Polity Press.
- Rawls, John (1951): "Outline of a Decision Procedure for Ethics", in *The Philosophical Review*, Vol. 60, No. 2: 177-197.
- Rawls, John (1996): *Political Liberalism*. New York: Columbia University Press.
- Rawls, John (1999): *A Theory of Justice: Revised Edition*. Cambridge, MA.: Harvard University Press.
- Rawls, John (2001): *Justice as Fairness: A Restatement*. Edited by Erin Kelly. Cambridge, MA: Harvard University Press.
- Sartorius, Rolf (ed.) (1983): *Paternalism*. Minneapolis: University of Minnesota Press.
- Simmons, A. John (1999): "Justification and Legitimacy", in *Ethics*, Vol. 109, No. 4: 739-771.
- Stark, Andrew (2002): "Beyond Choice: Rethinking the Post-Rawlsian Debate over Egalitarian Justice", in *Political Theory*, Vol. 30, No. 1: 36-67.
- Tan, Kok-Chor (1998) "Liberal Toleration in Rawls's Law of Peoples", in *Ethics*, Vol. 108, No. 2: 276-295.
- Tan, Kok-Chor (2004): *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism*. Cambridge: Cambridge University Press.
- Waldron, Jeremy (1987): "Theoretical Foundations of Liberalism", in *The*

Philosophical Quarterly, Vol. 37, No. 147: 127-150.

Wellmann, Christopher Heath (1999): “Liberalism, Communitarianism, and Group Rights”, in *Law and Philosophy*, Vol. 18, No. 1: 13-40.

Wellman, Christopher Heath (1995): “A Defence of Secession and Political Self-Determination”, in *Philosophy and Public Affairs*, Vol. 24, No. 2: 142-171.

Wellman, Christopher Heath (2005): *A Theory of Secession: The Case for Political Self-Determination*. New York: Cambridge University Press.

Wenar, Leif (2006): “Rights”, in *The Stanford Encyclopedia of Philosophy* (Fall 2006 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2006/entries/rights/>.

Wyller, Truls (1997): *Etikkens historie*. Oslo: Cappelen Akademisk.